Supreme Court, U.S.
FILED

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NO. _____

THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1997

◆

LEWIS G. ASHTON,

PETITIONER,

VS.

GRIEVANCE COMMITTEE FOR THE SECOND AND ELEVENTH JUDICIAL DISTRICTS, STATE OF NEW YORK,

RESPONDENT.

◆

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR NEW YORK STATE

◆

PETITION FOR WRIT OF CERTIORARI

◆

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116 pp

QUESTIONS PRESENTED FOR REVIEW

1. Certiorari should be granted to determine whether or not the Appellate Division, Second Department, State of New York, erred in appointing retired Supreme Court Justice Aaron Koota to referee a disciplinary hearing because his age, health, bias, racial aminus, lack of certification and improper assignment of the case, violated New York State Law and Rules, and thus the 14th Amendment to the United States Constitution.

2. Certiorari should be granted to determine whether or not a subsequent proceeding to determine if there was contempt of the Disbarment Order was also void, since;
(a) The original disciplinary hearing was void, and (b) The initial Order of Disbarment was not personally served as required by law, and Petitioner's conduct was in compliance with the Court Rules.

3. Certiorari should be granted to determine whether or not the acts of which your Petitioner were convicted in the United States District Court constitutes a serious crime as defined by New York State Judiciary Law Art. 4 Section 90 (4) (d), a felony as defined by Section 90 (4) (e), or accessorial conduct only, as defined by the Penal Law Section 20.10.

4. Certiorari should be granted to determine whether or not the reinstatement process, as provided for by 22 NYCRR 691.11 (a), has been skewed against African American Attorneys and in favor of others who though guilty of more heinous offenses are more readily reinstated, and thus a violation of the equal protection clause.

PARTIES TO THE PROCEEDINGS

Petitioner, Lewis G. Ashton, is a disbarred attorney and a resident of Cedarhurst, New York. I am the Petitioner in the Appellate Division of the Supreme Court of the State of New York, second Department and the Appellant before the State of New York Court of Appeals.

Respondent is the Grievance Committee for the Second and Eleventh Judicial Districts, State of New York, that is authorized to initiate disciplinary proceedings against attorneys, based on valid complaints.

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1997

PETITION FOR WRIT OF CERTIORARI

Lewis G. Ashton respectfully prays that a writ of certiorari issue to review the judgment of the New York State Court of Appeals.

◆

OPINIONS BELOW

The judgment of the New York State Court of Appeals denying Petitioner leave to appeal, dated Dec. 18, 1997, appears as Appendix A to the petition. The Order of the Appellate Division, Second Department, New York State, denying the motion of Petitioner for renewal and reargument or, in the alternative, for leave to appeal to the Court of Appeals as entered April 25, 1997, appears here as Appendix B. A notice of appeal was filed within 30 days of the above date, pursuant to CPLR 5601 (b) (1). The Order of the New York State Court of Appeals denying the appeal as of right was filed September 23, 1997 and appears here as Appendix C. Within 30 days of the aforementioned date, the petition seeking leave to Appeal was filed pursuant to CPLR Sect. 5602 (a) (1) (i), as permitted by CPLR Sect. 5514.

STATEMENT OF JURISDICTION

The judgment of the New York State Court of Appeals was filed December 18, 1997. No petition for rehearing was filed in my case. This petition is filed within 90 days of the above date. The jurisdiction of this Court to review the judgment on petition for certiorari is invoked under 28 U.S.C.A. 1257 (a) that permits review of final judgments or decrees rendered by the highest court of a State ".....where any title, right, privilege, or immunity is specially set up or claimed under the Constitution....."

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The 14th Amendment to the United States Constitution, Section 1 provides: .....No State shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.....

N. Y. State Judiciary Law Art. 4-a Section 115(1) provides: A retired Supreme Court Justice may, upon application, be certified by the Administrative board for service ....upon findings (a) that he has the mental and physical capacity to perform the duties of such office....

N. Y. State Judiciary Law Art. 4-a Sections 115(2) and 125 provide: No retired Justice may serve under any such certification beyond the last day of December in the year in which he reaches the age of seventy six.

N.Y. State Judiciary Law Art. 4 Section 90(6) provides: .....a copy of the charges against him must be delivered to him personally within or without the state...."

22 NYCRR 691.10(e) provides: ....during the period between the Order and the effective date he may wind up and complete, on behalf of any client, all matters which were pending on the entry date.

New York State Penal Law Section 20.10 provides: .....a person is not criminally liable for conduct of another person constituting an offense when his own conduct, though causing or aiding the commission of such offense is of a kind that is necessarily incidental thereto....

22 NYCRR 691.11(a) provides: any attorney disbarred after hearings....may not apply for reinstatement until the expiration of at least seven years from the effective date of his disbarment or renewal.....

STATEMENT OF THE CASE

Petitioner requests the court to review the decision of the Court of Appeals, State of New York. That unusual decision dated December 18, 1997, denied my motion for leave to appeal to the Court of Appeals [the highest court of the state in which a decision could be had] the Decision and Order of the Appellate Division, Second Department [the court of original instance], dated April 25, 1997. Thus effectively denying, me any appeal of my absolute disbarment from the practice of law.

Your Petitioner was duly admitted to the practice of law during the May term of 1976, in the Appellate Division, Second Department, State of New York.

By Order dated April 11, 1983 (Appendix D), your Petitioner was disbarred from the practice of law by the aforementioned Appellate Division.

The said Appellate Division, the forum of original instance, has consistently and routinely denied my Petitions for reinstatement, to the New York State Bar, citing;

(a) the disciplinary hearing and resulting order of disbarment
(b) the subsequent contempt of the disbarment order, and
(c) the 1986 felony conviction:

(i) My December 13, 1990 Petition, seven years after the disbarment, requesting that I be declared eligible for reinstatement, was denied for the aforementioned reasons.

(ii) My Petition in 1993, seeking reinstatement was again denied for the same reasons. So was my petition to reargue.

(iii) My Petition in 1996, seeking reinstatement was again denied by order dated January 2, 1997 (Appendix E), again citing the aforementioned reasons. So was my January 25,1997 petition for renewal and reargument (Appendix F) and supporting memorandum of law (Appendix G), in which I proved that (1) the disciplinary hearing was illegal and consequently void, (2) the subsequent contempt proceeding, was also void (3) the 1986 felony conviction was accessorial conduct only and not a serious crime as defined by New York State Judiciary Law, and (4) the denial of the Petitions for reinstatement 14 years after my disbarment, contravenes New York State Law, and the fundamental principles of fairness. (Appendix H) is an affirmation in response, submitted by the Grievance Committee, citing the same reasons. (Appendix I) is my reply Affidavit, thereto.

REASONS FOR GRANTING THE WRIT

I

THE APPELLATE DIVISION, SECOND DEPARTMENT, ERRED IN APPOINTING RETIRED SUPREME COURT JUSTICE, AARON KOOTA, TO REFEREE MY DISCIPLINARY HEARING BECAUSE HIS AGE, HEALTH, BIAS, RACIAL ANIMUS, LACK OF CERTIFICATION AND IMPROPER ASSIGNMENT OF THE CASE, VIOLATED NEW YORK STATE LAW AND RULES, THUS RENDERING HIS FINDINGS VOID, AND IN VIOLATION OF THE EQUAL PROTECTION CLAUSE.

Aaron Koota, a retired Supreme Court justice, was appointed a Special Referee to hear your petitioner's disciplinary proceedings and to report his findings to the Appellate Division. Your Petitioner respectfully submits that in so doing the Appellate Division contravened

many New York State laws, rules and a sense of judiciousness implicit in such hearings;

(i) New York State Judiciary Law Art. 4-a Section 115 (1) requires that a retired supreme court justice:

> "upon application, be certified by the administrative board for service...upon findings (a) that he has the mental and physical capacity to perform the duties of such office...."

Efforts to get a copy of Judge Koota's certification have been futile (See Appendices J and K). Since there is no rational reason for denying me access, the logical conclusion is that he was not properly certified. Your Petitioner further contends that the reason Judge Koota was not properly certified, was because he did not have the mental or physical capacity to perform the duties. He died one year and three months after my disbarment, this clearly calls into question his physical and emotional state in handling my proceedings. Also in question was his mental state. The New York Times articles, (Appendix L), demonstrates that his reputation in the community, as he acknowledged, is one of being unfair, bias and with an insanely obsessive penchant for ignoring the truth when it conflicts with his own misguided emotions. In his obituary carried by the N.Y. Times, dated July 23, 1984, a quotation of his was repeated, he said, "I know I have been criticized, called a headline-hunter ..... but I am convinced there are times when a District Attorney must use the newspapers to awaken the community to a menace in its midst, even before he collected enough evidence to prosecute anybody." The facts and the truth did not matter to Mr. Koota.

The second article contained in (Appendix L) is from the N.Y. Times magazine dated March 19, 1967. It discusses the extent to which he will go to feed his own

stereotypes and emotions. He employed trickery and deceit by withholding exculpatory information, so as to gain a conviction. As his record reveals, and as the hue and cry of the civil rights organizations made clear, he was more dishonest when it involved African-Americans. This racial animus explains why he had such a difficult time with the truth in my proceedings.

(ii) Art. 4-a section 115 (2) states that;
"..... No retired justice may serve under any such certification beyond the last day of December in the year in which he reaches the age of seventy six".

This is reiterated in Art. 4-a Section 125. Upon information and belief, Mr. Koota was already 77 years of age in 1982 when he continued to serve as Special Referee (see Appendix M, supplemental order of reference dated February 10, 1982 and Appendix N, Referee's report dated Sept. 8, 1982).

(iii) Section 90 of the New York State Judiciary Law, as the caption states, governs admission to and removal from practice (of attorneys) by the appellate division and character committees. Subsection (4) discusses how to treat an attorney convicted of a felony or a serious crime. Subsection (4)(h) says:

If the attorney requests a hearing, "the appellate division of the supreme court shall refer the proceeding to a referee, justice or judge appointed by the appellate division for hearing, report and recommendation."

The same is true under 22 NYCRR 691.7 that requires the matter referred to a referee forthwith.

At the time Mr. Koota was referred my case, I was not convicted of a crime. Even though the documents on which I was convicted, and which are discussed later

were dated in 1982 and 83, the indictment occurred in 1985. My case should not have been referred to a special referee but heard by the committee or a subcommittee as required by 22 NYCRR 691.4 (f) which governs the appointment of grievance committees; commencement of investigation of attorney misconduct, complaints, and procedure. Subparagraph (f) states ....."the committee or a subcommittee shall proceed to hold a hearing of the case ....."

These circumstances clearly dictate that Mr. Koota's hearing and findings are void. Case law supports this position;

In Salina Const. and Supply Co. v. Richards Const. Co., 1951, 104 N.Y.S. 2d 96, it was held that where the term of office of a justice of the Supreme Court expired on December 31, 1950 because he had attained 70 years of age, judgment rendered by him on January 6, 1951 was void, though entered on written stipulation and joint motion of attorneys of record for the parties. This was reinforced in People v. Poole, Co. Ct., 133 N.Y.S. 2d 465 (1954), which has become the basic law, that generally, the powers of a judge of the Court terminate when he ceases to be a judge or when his office or term of office expires.

Judge Koota's term had expired, he was not properly certified, his physical and mental health and his notorious bias all should have prevented him from hearing any case.

Because of his personal bias and bigotry, Referee Koota refused to accept the truth and manipulated the information presented so as to paint the worse possible picture;

(a) I did not convert escrow funds to my own use. There were valid explanations offered for the two occasions in which $2000.00 were prematurely

withdrawn, from the account, reasons which Mr. Koota's bigotry did not permit him to accept.

(b) The $15,000.00 check did not represent funds which should have been escrowed.

(c) I did not fail to cooperate with the Grievance Committee as the Referee's own report itself acknowledged.

(d) I did not convert a client's $2000.00 to my own use.

(e) I did produce the entire record of my escrow account as it was produced by the Bank.

(f) I did not fail to pursue a criminal matter. The client absconded.

(g) The account was not overdrawn on 48 occasions, only on 4 occasions, one of which ran for an extended period, with the banks permission, while I was outside the country.

Other than a charge involving one of the $2000.00 withdrawal, where there was a miscommunication as to the status of the underlying Real Estate transaction, and another of failing to pursue a criminal matter after the client absconded; the charges were not initiated by Complaints but by coercing witnesses without a complaint to appear and then distorting their testimony and manipulating the evidence.

Judge Koota's findings have never been reviewed as evidenced by Appendices A & C. Without the issuance of a writ, one biased person would have determined my life's work without any opportunity for review. This is exactly what the Constitutional Guarantees were designed to avoid.

II

THE SUBSEQUENT CONTEMPT PROCEEDING AND FINDINGS WERE ALSO VOID, BECAUSE:

(A) THE ORIGINAL DISCIPLINARY HEARING WAS

VOID, AND (B) BECAUSE THE INITIAL ORDER OF DISBARMENT WAS NOT PERSONALLY SERVED AS REQUIRED BY LAW, AND PETITIONER'S CONDUCT WAS IN COMPLIANCE WITH THE COURT RULES.

The Appellate Division rendered its Order of Disbarment, (Appendix D), effective the 11th of April 1983. Said Order was then served on my Attorney, Trevor Headley, Esq., who advised me of the Disbarment. Prior to my receiving the actual Order and the accompanying instructions, some three weeks after the disbarment, I appeared on 3 existing cases. I emphasize, these were not new cases, and the appearances were for the sole purpose of winding up my practice.

Section 90 (6) of Art. 4 of the Judiciary Law mandates that "Before an attorney or counselor-at-law is suspended or removed.....a copy of the charges against him must be delivered to him personally within or without the state....."

I respectfully submit that this, even more so, is applicable to the order of disbarment. Failure to comply should excuse your Petitioner's conduct which complied with Section 691.10(e) that states, ".....during the period between the order and its effective date he may wind up and complete, on behalf of any client, all matters which were pending on the entry date."

For this reason the contempt proceeding is also void.

This proceeding should also be voided because it would not have been necessary, had it not been for Mr. Koota's findings and the Order of Disbarment. That is, if there was no order of disbarment, then my appearances that resulted in the contempt proceeding, would not be questionable. I submit that because the

original proceeding, as previously discussed, was void, then the subsequent contempt proceeding is also void.

III

THE ACTS OF WHICH YOUR PETITIONER WERE CONVICTED IN THE UNITED STATES DISTRICT COURT DO NOT CONSTITUTE A SERIOUS CRIME AS DEFINED BY NEW YORK STATE JUDICIARY LAW ART. 4 SECTION 90 (4)(d), OR A FELONY AS DEFINED BY SECTION 90 (4)(e), BUT ACCESSORIAL CONDUCT ONLY, AS DEFINED BY THE PENAL LAW SECTION 20.10.

The Indictment, (Appendix O), focused on a V.A. house, 27 Brooke Avenue, Wyandanch, New York. Nine of the eleven counts of the Indictment allege that I, along with Diane McGhee and Neville Nicholas, filed certain documents or engaged in certain activities designed to defraud the V.A., an agency of the United States. The other 2 counts pertained to the use of a credit card and mail fraud. As the conviction established (Appendices P, and Q), I did not file any documents, I did not engage in mail fraud, and did not try to defraud either the United States Government or the American Express company. I simply notarized two documents, unwittingly, and made a legitimate offer to purchase a house, (Appendix R), acts which New York State Penal Law Sect 20.10 describes as "Accessorial Conduct" and not a crime. This is the only conclusion that can be drawn from the proceedings, and takes on added significance when it is noted that the Jury was never charged as to the materiality of my conduct in the conspiracy. Had they been so charged, their conclusion would have been different. In the indictment, the V.A. alleges that in an effort to secure premises at 27 Brooke Avenue, Wyandanch, New York, Diane McGhee filed several false documents on my behalf. These were all documents necessary to procure the house, a total of

nine, which became the basis of the charges of filing false documents. As noted above, the three documents on which I was convicted were for notarizing the two letters and making an offer of purchase. This correctly demonstrates that I was not a party to the scheme but only engaged in "Accessorial conduct". Section 20.10 of the New York State Penal Law exempts from criminal liability, this type of conduct, it states ".....a person is not criminally liable for conduct of another person constituting an offense when his own conduct, though causing or aiding the commission of such offense is of a kind that is necessarily incidental thereto....."

Like the notarized documents, the offer of purchase must be deemed "accessorial conduct." Since I was deemed not be to a part of McGhee's scheme, my offer of purchase was legitimate, particularly since it was sanctioned by Carlos Ortiz of-the V.A. who informed me to send $1,946.80 with the letter. A sum that was never returned.

In similar fashion, the conspiracy conviction under 18 U.S.C. 371 cannot be a "felony" or "serious crime" as above defined by N.Y. State Judiciary Law. If my conduct, as outlined above, is deemed accessorial conduct, then the same section 18 U.S.C. 371 reduces the participation on my part, to a "non-crime". It states "..... If however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor."

In taking this to its logical conclusion, if the offense is only "accessorial conduct", then there is no crime. This, in essence, is the holding in the New York State case, People v. Potwora, 354 N.Y.S. 2d 492 (1974) which states; "If a crime necessarily involves the mutual cooperation of two persons, and if, in fact, they have

committed the crime, they may not be convicted of a conspiracy to commit it."

What I am guilty of is accessorial conduct, which, though not a crime, would preclude a conspiracy conviction in New York State.

All the other allegations in the Indictment were rejected by the Jury.

IV

THE REINSTATEMENT PROCESS AS PROVIDED FOR BY 22 NYCRR 691.11 (A), UPON INFORMATION AND BELIEF, HAS BEEN SKEWED AGAINST AFRICAN-AMERICAN ATTORNEYS AND IN FAVOR OF OTHERS WHO THOUGH GUILTY OF MORE HENIOUS OFFENSES ARE MORE READILY REINSTATED, THUS VIOLATING THE EQUAL PROTECTION CLAUSE.

Fundamental fairness requires that a writ be issued :

(A) 22 NYCRR 691.11 (a) states "any attorney disbarred after hearings.....or whose name has been stricken from the role of attorneys pursuant to subdivision 4 of section 90 of the Judiciary Law....may not apply for reinstatement until the expiration of at least seven years from the effective date of his disbarment or renewal...."

Even though it is entirely within the purview of the Appellate Division whether or not to grant or deny my motion, it has long been recognized that due process requires a hearing on the application for reinstatement of a disbarred attorney (Matter of Mairs, 120 AD 2d 146, 150), particularly where there are disputed factual issues as outlined above. I have never been accorded a hearing, even after several reapplications.

(B) The crimes and allegations against your Petitioner are not as serious as those of other attorneys who have been reinstated, see;

(i) Matter of Kase, 128 AD 2d 467
(ii) Matter of Fischer, 161 AD 2d 421
(iii) Matter of Gotkin, 179 AD 2d 526
(iv) Matter of Sweeney, 181 AD 2d 626
(v) Matter of Hoffer, 592 NYS 2d 577

and for my transgressions I have been severely punished, including incarceration in a Federal Prison for one year and one day, and in the Bronx House of detention for 10 days.

(C) All the allegations against your Petitioner occurred between 14 and 15 years ago, even though the criminal matter came to trial 11 years ago. In addition, your Petitioner has resolved all outstanding matters that could adversely affect his application for reinstatement even where he believes there was no liability on his part.

(D) Since my disbarment in 1983 I have done and complied with everything required for reinstatement.

(E) The Statute of limitation is tolled each time a reapplication is denied for the same fallacious reasons as caused the original disbarment and where state agencies including the Appellate Division, have frustrated every effort to get to the exculpatory information.

Unless a writ is issued these issues of fundamental fairness may never be addressed.

CONCLUSION

I respectfully submit that my disbarment from, and the denial of my Petitions for reinstatement to the New York State Bar, particularly that made 14 years after my disbarment, contravenes the due process and equal protection clauses of the Constitution.

Section 1 of the 14th Amendment to the United States Constitution provides:

> "..... No State shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws....."

(1) The referee appointed to conduct the disciplinary hearing against me was too old, ill, racially biased, improperly certified and improperly assigned my case, all in contravention of N.Y. State laws and rules, and therefore void, and violates the constitutional guarantees.

(2) The subsequent contempt proceeding and findings were also void, because; (a) the original disciplinary hearing was void and, (b) because the resulting order of disbarment was not personally served as required by law and your Petitioner's conduct was in compliance with the court rules.

(3) The acts of which your Petitioner were convicted in the United States District Court do not constitute a serious crime as defined by New York State Judiciary Law Art. 4 Sect. 90 (4) (d), or a felony as defined by Sect. 90 (4) (e), but accessorial conduct only

as defined by the New York State penal law Section 20.10.

(4) Upon information and belief, the reinstatement process has been skewed against African-American attorneys to the extent that three petitions and 14 years later, your Petitioner is still not reinstated, without even the benefit of a hearing, while other attorneys with more heinous and outrageous conduct have been reinstated at the earliest possible time.

All this directly impinges upon the right title, privilege and immunity specifically protected by the 14th Amendment to the Constitution, and a writ of Certiorari to this Court is the only method by which review of these due process and equal protection violations, in a disbarment proceeding, can be made, Ginger v. Circuit Court for Wayne County, 372 F. 2d 621 (1967).

In sum, the decision below demonstrates a compelling need for the exercise of this Court's power of supervision.

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,



Lewis G. Ashton
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(516) 374 - 5746

Dated: March 9, 1998

APPENDIX

A	Court of Appeals Order, dated 12-18-97	1a
B	Appellate Division Order, dated 4-25-97	2a
C	Courts of Appeals Order, dated 9-23-97	4a
D	Order of Disbarment. dated 4-11-83	6a
E	Appellate Division Order, dated 1-2-97	11a
F	Motion for Reargument, dated 1-25-97	13a
G	Memorandum supporting reargument, dated 1-25-97	19a
H	Grievance Committee's Response, dated 2-11-97	33a
I	Reply Affidavit, dated 2-18-97	36a
J	Letter to Appellate Division, dated 1-23-95	40a
J	Letter from Appellate Division, dated 2-9-95	42a
K	Letter to Office of Court Admin., dated 2-22-95	43a
L	NY Times Article, dated 7-23-84	44a
L	NY Times Magazine article, dated 3-19-1967	46a
M	Supp. Order of Reference, dated 2-10-82	49a
N	Refree's Report, dated 9-8-82	51a
O	Indictment (85 CR. 448 (JES)	80a
P	Notarized Letter, dated 11-23-82	89a
Q	Notarized Letter, dated 11-24-82	90a
R	Offer of Purchase, dated 9-7-83	91a

APPENDIX A

State of New York
Court of Appeals

Stewart M. Cohen
Clerk of the Court

Clerk's Office
Albany, New York 12207-1095

DECISION December 18, 1997

2-12 Mo. No. 1316
In the Matter of Lewis G.P.
Ashton, a disbarred attorney,
for Reinstatement to the Bar
of the State of New York.

Motion for leave to appeal denied
Judge Titone took no part.

APPENDIX B

SUPREME COURT OF THE STATE OF NEW YORK

APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT

4119Y
O/hd

GUY JAMES MANGANO, P.J.
LAWRENCE J. BRACKEN
SONDRA MILLER
CORNELIUS J. O'BRIEN
JOHN COPERTINO, JJ.

90-09613

DECISION & ORDER ON MOTION

In the Matter of the Application of
Lewis G.P. Ashton, a disbarred attorney,
for Reinstatement to the Bar of the
State of New York.

Motion by the petitioner, Lewis G. P. Ashton, (1) for renewal and reargument of his second application for reinstatement to the practice of law, which was denied by decision and order of this court dated January 2, 1997, or (2) for leave to appeal to the Court of Appeals. The petitioner was admitted to the Bar by the Appellate Division, Second Judicial Department, on May 5, 1976, under the name Lewis George Ashton. By decision and order of this court dated April 11, 1983, the petitioner was disbarred and his name was stricken from the roll of attorneys and counselors-at-law following a disciplinary proceeding in which it was determined, *inter alia,* that he converted escrow funds. The petitioner was subsequently found to be in contempt of the disbarment order by order of this court dated August 2, 1984, and was fined $250 and imprisoned for ten days. By decision and order of this court dated December 13, 1990, the petitioner's motion declaring him eligible to apply for reinstatement on or after April 11,1990, was denied. The court determined that the petitioner's 1986 felony conviction made him ineligible for reinstatement until 1993. By decision and order of this court dated

October 6, 1993, the petitioner's first application for reinstatement was denied. By further order of this court dated January 2, 1997, the petitioner's second application for reinstatement was denied.

Upon the papers filed in support of the motion and the papers filed in response thereto, it is

ORDERED that the motion is denied.

MANGANO, P.J., BRACKEN, MILLER, O'BRIEN and COPERTINO, JJ., concur.

ENTER:

/S/ MARTIN H. BROWNSTEIN

Clerk

SUPREME COURT, STATE OF NEW YORK
APPELLATE DIVISION SECOND DEPT

I, MARTIN H. BROWNSTEIN, Clerk of the Appellate Division of the Supreme Court, Second Judicial Department, do hereby certify that I have compared this copy with the original filed in my office on and that this copy is a correct transcription of said original. APR 25 1997

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of this Court on April 25, 1997 APR 25 1997

MARTIN H. BROWNSTEIN, LEWIS G. P.

APPENDIX C

State of New York,
Court of Appeals

At a session of the Court held at Court of Appeals Hall in the City of Albany on the twenty-third day *Of* September 1997

Present, HON. JUDITH S. KAYE, *Chief Judge presiding.*

Mo. No. 1162 SSD 71
In the Matter of Lewis G.P. Ashton, a disbarred attorney, for Reinstatement to the Bar of the State of New York.

The appellant having filed notice of appeal in the above title and due consideration having been thereupon had, it is

ORDERED, that the appeal be and the same hereby is dismissed without costs, by the Court sua sponte, upon the ground that no appeal lies as of right from the unanimous order of the Appellate Division absent the direct involvement of a substantial constitutional question (CPLR 5601). Judge Titone took no part.

/S/ STUART M. COHEN
Clerk of the Court

State of New York

Court of Appeals

Stewart M. Cohen
Clerk of the Court

Clerk's Office
Albany, New York 12207-1095

DECISION September 23, 1997

Mo. No. 1162 SSD 71
In the Matter of Lewis G. P. Ashton,a disbarred attorney, for Reinstatement to the Bar of the State of New York.

Appeal dismissed without costs, by the Court sua sponte, upon the ground that no appeal lies as of right from the unanimous order of the Appellate Division absent the direct involvement of a substantial constitutional question (CPLR 5601). Judge Titone took no part.

APPENDIX D

At a Term of the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department held in Kings County on April 11, 1983.

HON. MILTON MOLLEN, Presiding Justice,
HON. VINCENT D. DAMIANI,
HON. VITO J. TITONE, — **Associate Justices**
HON. LEON D. LAZER,
HON. GUY J. MANGANO.

In the Matter of Lewis G. P. Ashton, an attorney, admitted under the name Lewis George Ashton.	
Grievance Committee for the Second and Eleventh Judicial Districts,	**Order of Disbarment.**
Petitioner;	
Lewis G. P. Ashton,	
Respondent.	

A disciplinary proceeding having been instituted in this court upon the petition of the Grievance Committee for the Second and Eleventh Judicial Districts in respect to Lewis G. P. Ashton, an attorney and counselor at law, who was admitted to practice by this court on May 5, 1976 under the name Lewis George Ashton; the petition praying that the respondent Lewis G. P. Ashton be disciplined for professional misconduct upon the charges therein set forth; the proceeding having come on before this court by a notice of petition, dated July 8, 1981; and the respondent having filed an answer thereto; and this court, by an order dated October 20, 1981, having referred the issues raised by the petition and the answer to Hon. AARON E. KOOTA (a retired Justice of the Supreme Court), as Special Referee, to hear and to report with his findings upon each of the issues; by a further order of this court, dated

February 10, 1982, the issues raised in a supplemental petition and the answer thereto were referred to the said Special Referee to hold hearings on the issues presented on the supplemental proceeding as well as on the original proceeding and to re port his findings on each of the issues; thereafter, the said Special Referee having held a hearing and having filed his report with this court on September 14, 1982, together with a transcript of the hearing and the exhibits; and the petitioner having moved, by a notice of motion, dated September 16, 1982, to confirm the report of the referee and the respondent having submitted an affirmation thereto;

Now, upon the said petition, verified July 8, 1981; the said answer, sworn to August 19, 1981 and the exhibits annexed thereto; the said supplemental petition, affirmed December 16, 1981; the said answer thereto, dated December 30, 1981; the report; the transcript; the petitioner's notice of motion and the affirmation of Richard Harrow in support of the said motion; the affirmation of Trevor L. F. Headley in opposition to the petitioner's motion; and upon all the papers filed herein; and Richard Harrow, Esq., having appeared of counsel for the petitioner and Trevor L. F. Headley Esq., having appeared of counsel for the respondent, due deliberation having been had thereon; and upon the PER CURIAM OPINION herein, dated April 11, 1983, heretofore filed and made a part hereof, it is

ORDERED that the petitioner's motion to confirm the Special Referee's report is hereby granted and the said report is hereby confirmed, and it is further

ORDERED and DIRECTED that, pursuant to statute (Judiciary Law, § 90), effective April 11, 1983, the respondent Lewis G. P. Ashton, admitted under the name Lewis George Ashton, be and he hereby is disbarred from the practice of the law and his name is hereby struck from the Roll of Attorneys and Counselors of Law, and it is further

ORDERED and DIRECTED that the respondent Lewis G. P. Ashton, admitted under the name Lewis George Ashton, shall promptly comply with this Court's rules governing the conduct of disbarred, suspended and resigned attorneys, a copy of such rules being annexed hereto and made a part hereof, and it is further ORDERED that, pursuant to statute (Judiciary Law, § 90), effective April 11, 1983, the respondent Lewis G. P. Ashton, admitted under

the name Lewis George Ashton, be and he hereby is commanded to desist and refrain: (1) from practicing law in any form, either as principal or as agent, clerk or employee of another; (2) from appearing as an attorney or counselor at law before any court, judge, justice, board, commission or other public authority; (3) from giving to another an opinion as to the law or its application, or any advice in relation thereto; and (4) from holding himself out in any way as an attorney or counselor at law.

Enter:

s/ Irving N. Selkin
Clerk of the Appellate Division

SUPREME COURT, STATE OF NEW YORK
APPELLATE DIVISION, SECOND DEPT.

I, IRVING N. SELKIN, Clerk of the Appellate Division of the Supreme Court, Second Judicial Department, do hereby certify that I have compared this copy with the original filed in my office on APRIL II, 1983 and that this copy is a correct transcription of said original.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of this Court on APRIL 11, 1983

s/ Irving N. Selkin
Clerk

APRIL 11, 1983

SUPREME COURT: APPELLATE DIVISION
SECOND JUDICIAL DEPARTMENT

MOLLEN, P. J., DAMIANI, TITONE, LAZER AND MANGANO, JJ.

In the Matter of Lewis G. P. ASHTON, admitted under the name LEWIS GEORGE ASHTON,

an attorney,

GRIEVANCE COMMITTEE FOR THE SECOND AND ELEVENTH JUDICIAL DISTRICTS,

Petitioner;

LEWIS G. P. ASHTON,

Respondent.

No. 7255

DISCIPLINARY proceeding instituted by the Grievance Committee for the Second and Eleventh Judicial Districts. By orders of this court dated October 20, 1981 and February 10, 1982, respectively, the issues were referred to Hon. AARON E. KOOTA, a retired Justice of the Supreme Court, to hear and report.

Frank A. Finnerty, Jr., Brooklyn, N.Y. (Richard Harrow of counsel), for petitioner.

Headley & Zeitlin, Brooklyn, N.Y. (Trevor L. F. Headley of counsel), for respondent.

PER C U R I A M The respondent was admitted to practice by this court on May 5, 1976. In this proceeding to discipline the respondent for professional misconduct, the petitioner moves to confirm the report of the referee to whom the issues were referred to hear and report and the respondent's attorney submits an affirmation in opposition to said motion.

The referee found the respondent guilty of the following: converting escrow moneys in several legal matters entrusted to him, issuing a check for $15,000 knowing that there were insufficient funds in the account upon which it was drawn,

neglecting a legal matter entrusted to him by failing to perfect an appeal, and failing to maintain proper escrow records pursuant to the rules of this court.

After reviewing all of the evidence, we are in full agreement with the referee's report and therefore grant the petitioner's motion to confirm said report.

In determining an appropriate measure of discipline to be imposed, we are mindful of respondent's conversion of escrow moneys. Accordingly, the respondent is adjudged guilty of serious professional misconduct and should be, and hereby is, disbarred from the further practice of law, and his name is ordered removed from the roll of attorneys and counselors at law, effective forthwith.

MOLLEN, P. J., DAMIANI, TITONE, LAZER AND MANGANO, JJ., concur.

APPENDIX E

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND JUDICIAL DEPARTMENT

82280
B/e 111

GUY JAMES MANGANO, P.J.
WILLIAM C. THOMPSON
THOMAS R. SULLIVAN
VINCENT R. BALLETTA, JR.
DAVID S. RITTER, JJ.

90-09613

DECISION & ORDER ON MOTION

In the Matter of Lewis G. P. Ashton, a Disbarred Attorney, for Reinstatement to the Bar of the State of New York.

Motion by petitioner, Lewis G. P. Ashton, for reinstatement as an attorney and counselor-at-law. The petitioner was admitted to the practice of law by the Appellate Division, Second Judicial Department on May 5, 1976, under the name Lewis George Ashton. By order of this court dated April 11, 1983, the petitioner was disbarred from the practice of law. By further order, dated August 2, 1984, the petitioner was found to be in contempt of the disbarrment order, and the court fined him $250 and directed that he be imprisoned for ten days. By order of this court, dated December 13, 1990, the petitioner's motion declaring him eligible to apply for reinstatement on or after April 11, 1990 was denied. The court rendered the opinion that the respondent's 1986 felony conviction makes him ineligible for reinstatement until 1993.

Upon the papers filed in support of the motion and

the papers filed in opposition thereto, it is

ORDERED that the motion is denied.

MANGANO, P.J., THOMPSON, SULLIVAN, BALLETTA and RITTER, JJ., concur.

SUPREME E COURT, STATE OF NEW YORK
APPELATE DIVISION SECOND DEPT

I, MARTIN H. BROWNSTEIN, Clerk of the Appellate Division of the Supreme Court, Second Judicial Department, do hereby certify that I have compared this copy with the original filed in my office on FEB 18 1994 and that this copy is a correct transcription of said original.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of this court on FEB 18 1994

ENTER:
/S/ MARTIN H. BROWNSTEIN
CLERK

February 18, 1994
MATTER OF ASHTON, LEWIS G.P.

APPENDIX F

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION
SECOND JUDICIAL DEPARTMENT

Docket No. 90-09613

In the matter of Application of LEWIS G. P. ASTON, a Disbarred Attorney, for Reinstatement to the Bar of the State of New York.

NOTICE OF MOTION FOR RENEWAL AND REARGUMENT, ETC.

LEWIS G. P. ASTON,

Petitioner.

SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavit of Lewis G. P Ashton, Petitioner, dated January 25, 1997, the exhibits annexed thereto, including an Order of this Court dated January 2, 1997, which Order denied Petitioner's application for reinstatement, the Petitioner's memorandum of law in support of the motion submitted herewith, and the proceedings previously held herein, the undersigned will move this Court on the 21st day of February, 1997, at 9:30 o'clock in the forenoon of that day or as soon thereafter as counsel may be heard at the Courthouse, 45 Monroe Place, Brooklyn, New York, for an Order:

1. Granting renewal and reargument of the application for reinstatement as an attorney and counselor-at-law, previously made by Petitioner; and

2. Upon such renewal and reargument, reinstating Petitioner pursuant to sect. 90 (5)(c), or granting said application to the extent of referring same for a hearing in accordance with Rule 691.11 of the rules of this Court; or

3. In the alternative, in the event the Court denies renewal and reargument, or grants renewal and reargument but

adheres to its prior decision wherein Petitioner's application was denied in its entirety, grant Petitioner leave to appeal to the Court of Appeals from the Order of this Court made and entered January 2, 1997 and the order or this Court disposing or this motion for renewal and reargument; and

4. For such other and further relief as this Court may deem just and proper.

Dated: Nassau, New York
January 25, 1997

Yours, etc.

Lewis G. P. Ashton, Petitioner
382 Clinton Avenue
Cedarhurst, New York 11516
(516) 374 - 5746

To: Robert H. Straus, Esq.
Grievance Committee for the
Second and Eleventh Judicial Districts
210 Joralemon Street
Brooklyn, New York 11201

The Grievance Committee
on Character and Fitness
210 Joralemon Street
Brooklyn, New York 11201

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION
SECOND JUDICIAL DEPARTMENT

Docket No. 90-09613

In the matter of Application of LEWIS G. P. ASTON, a Disbarred Attorney, for Reinstatement to the Bar of the State of New York.	:	**AFFIDAVIT IN SUPPORT OF PETITIONER'S MOTION FOR RENEWAL AND REARGUMENT, ETC.**
LEWIS G. P. ASTON,	:	
Petitioner.	:	

State of New York)
ss-
County of Nassau)

LEWIS G. P. ASHTON, being duly sworn deposes and says:

I am the Petitioner in the above captioned matter, and submit this affidavit in support of my within motion for renewal and reargument of my previous application for reinstatement as an attorney at law and upon such renewal and reargument, reinstating Petitioner pursuant to sect. 90 (5)(c) , or granting said application to the extent of referring same for hearing in accordance with Rule 691.11 of the Rules of this Court, or, in the alternative, granting leave to appeal to the Court of Appeals.

By Order made and entered January 2, 1997, this Court denied Petitioner's said application for reinstatement without a hearing (a copy of the January 2, 1997 Order is annexed hereto as Exhibit 1).

The Motion to Renew and Reargue

Renewal and reargument is warranted, as more fully set forth in the Petitioner's Memorandum of Law submitted herewith, for the following reasons;

A) Denial of a hearing to Petitioner upon his application for reinstatement to the Bar made almost fourteen years after Petitioner was disbarred and his name stricken from the roll of attorneys, contravenes principles of fundamental fairness.

B) The Court's decision ignores applicable New York State Laws and court rules

THE FACTS

In denying your Petitioner's Petition for reinstatement to the roll of attorneys and counselors-at-law, the Court noted the following;

(1) A disciplinary proceeding determined, Inter alia, that he had converted escrow funds.

(2) The petitioner was subsequently found in contempt of the disbarment order, and

(3) The respondent's 1986 felony conviction made him ineligible for reinstatement until 1993.

Even though the Court's Decision and Order on motion did not specifically note these as its reasons for denying my petition, your Petitioner submits that it is the only reasonable conclusion that can be drawn therefrom.

If this is true, as we must conclude, then the Court's Order of denial, I respectfully submit, is flawed, and should be reversed for the following reasons:

(1) The disciplinary hearing referred to in paragraph one above was conducted by a retired Justice of the Supreme Court, Aaron Koota. Upon information and belief, Judge Koota;

a) Turned 76 years of age in 1981 and thus was beyond the statutory age to conduct and conclude a hearing in 1982 (Exhibits 2 & *3),* In contravention of N. Y. State Judiciary Law Art. 4-a section 115 (2).

b) Was not certified as required by N. Y. State Judiciary Law. Art. 4a section 115(1) (Exhibits 4 & 5).

c) Should not have been referred my case because of his known bias (Exhibit 6) and because N. Y. State Judiciary law Art. 4 section 90 (4)(h) requires a referral to a special referee only where the attorney has been convicted of a crime, see 22 NYCRR 691.7 (a). I was not convicted, nor charged with a crime at the time of the hearing. 22 NYCRR Sect. 691.4 (f) requires the committee or a subcommittee to hold a hearing.

As a result of these violations, the law is clear (as outlined in the annexed memorandum), Judge Koota's findings are void.

(2) If indeed Judge Koota's hearing and findings are void, as they are, then the subsequent proceeding referred to in paragraph 2 above is also void. The contempt proceeding only became necessary as a consequence of a prior proceeding that was void. In any event, I was not personally served with the order of disbarment and the accompanying instructions as prescribed by subdivision 6 of section 90 of the Judiciary law, this section requires personal service where the Attorney can be found. At the time I was living and practicing in Queens County, New York. Because I was not personally served, I proceeded to windup my practice by operation of law, specifically, 22 NYCRR 691.10 (e) which permits the attorney to wind up and complete existing matters. Believing I had 30 days to wind up, I appeared on behalf of existing clients. This was about 3 weeks after my disbarment. I emphasize, these were not new clients but existing clients. This too should serve to void the subsequent hearing and nullify the finding of contempt.

(3) The 1986 Felony conviction referred to in paragraph 3 above occurred in the United States District Court for the Southern District of New York under indictment # 85 CR 448. There I was convicted of one count of conspiracy, 18 U.S.C. 371 and 3 counts of false statements, 18 U.S.C. 1001. The conviction deemed me participating In a conspiracy when I inadvertently notarized 2 documents in 1982 (Exhibits 7 & 8) and made an offer of purchase in 1983 (Exhibit 9) of a publicly listed V.A. house, acts which are no more than accessorial conduct as defined by section 20.10 of N.Y.S. Penal Law. I ask the Court to take judicial notice of the fact that my deposit of $1,946.80 that accompanied the offer was never returned. I derived no benefit from these crimes, to the contrary, I lost money. I respectfully submit that, as developed in the annexed memorandum, these acts would not be deemed a "serious crime" as described in New York State Judiciary Law Art. 4 section 90 (4)(d) or a "felony" as defined in subparagraph (4)(e) and consequently should not be a bar to my being reinstated particularly, since they occurred almost 15 years ago. Even though these acts did not form the basis of my disbarment, subparagraph 5(c) permits the Appellate Division to "grant a hearing and may retroactively vacate or modify such debarment and impose such discipline as it deems just and proper under the facts and circumstances."

I respectfully bring to the Court's attention that all matters of contention occurring prior to my disbarment have been resolved. That nothing has happened since my disbarment that should jeopardize my being reinstated.

I respectfully beg the Court to consider these issues and reinstate me to the role of attorney or in the alternative grant me a hearing so as to explore *any* or all the Issues, and if my petition is denied, permit me to go to the Court of Appeals in as much as these are issues in which, I submit, the Court of Appeals would be interested.

WHEREFORE, your petitioner, respectfully requests that the within motion for renewal and reargument, etc., be granted.

/S/ Lewis G. P. Ashton

(516) 374-5746

Sworn to Before
me this 30th day of January 1997

Notary Public

CONSUELO JUAREZ
NOTARY PUBLIC, State of New York
No. 41-4998008
Qualified in Queens County
Commission Expires June 22, 1998

APPENDIX G

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION
SECOND JUDICIAL DEPARTMENT

---x

In the matter of the Application of :
LEWIS G. P. ASHTON, a Disbarred Docket No. 90-09613
Attorney, for Reinstatement to the :
Bar of the State of New York.

LEWIS G.P. ASHTON, :

Petitioner.

---x

MEMORANDUM OF LAW IN SUPPORT OF
PETITIONER'S MOTION TO RENEW, ETC.

Lewis G.P. Ashton, Pro Se
382 Clinton Avenue
Cederhurst, New York 11516
(516) 374-5746

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Preliminary Statement

Petitioner's Memorandum is hereby submitted in support of his within motion seeking, among other things, renewal and reargument of his application for reinstatement dated January 25, 1997. Your Petitioner contends that in denying his application, the Appellate Division ignored applicable New York State laws and rules and contravened the principles of fundamental fairness.

In as much as the Court continues to make reference to (1) the disciplinary proceeding, (2) the subsequent contempt proceeding, and (3) the criminal conviction, in denying my application for reinstatement, I respectfully submit that it is incumbent on it to examine them more carefully. An examination will reveal that a grave miscarriage of justice occurred.

Statement of Facts

The relevant facts have already been set forth in your Petitioner's affidavit, which are as follows:

Upon information and belief:

(1) The disciplinary hearing resulting in my disbarment was illegally referred to a special referee, Aaron Koota, who as a retired Justice of the Supreme Court, was too old, too biased, and not appropriately certified, his findings were therefore void.

(2) The subsequent contempt proceeding was also void, for two reasons; (a) it was the result of a proceeding that was itself void without which my subsequent actions would not have been called into question, and (b) I was not personally served with the order of disbarment and the accompanying instructions as prescribed by N.Y.S. Judiciary Law Art. 4 Sect 90 (6), even though I was still residing and practicing law in the same jurisdiction as I did for years. The resultant infraction occurred because I was winding up my practice by operation of law, pursuant to 22 NYCRR 691.10(e).

(3) I was convicted of unwittingly notarizing 2 documents in 1982 and making an offer to purchase a publicly listed V.A. house which was deemed my involvement in a conspiracy. I again respectfully submit that none of these acts would constitute a "felony" as defined

by 90 (4)(e) or a "serious crime" as defined by 90 (4)(d), particularly since I derived no benefit from my actions and to the contrary, did loose money.

Your Petitioner is praying that these wrongs will be vindicated by the Appellate Division as is authorized by Section 90 (5)(c).

ARGUMENT

PONT ONE

WHETHER OR NOT RETIRED SUPREME COURT JUSTICE, AARON KOOTA'S FINDINGS WERE VOID GIVEN HIS AGE, HEALTH, BIAS, RACIAL ANIMUS, LACK OF CERTIFICATION AND IMPROPER ASSIGNMENT OF THE CASE.

Aaron Koota, a retired Supreme Court justice, was appointed a Special Referee to hear your Petitioner's disciplinary proceedings and to report his findings to the Appellate Division. Your Petitioner respectfully submits that in so doing the Appellate Division contravened many New York State laws, rules and a sense of judiciousness implicit in such hearings;

(1) New York State Judiciary Law ART 4-a section 115 (1) requires that a retired supreme court justice:

> upon application, be certified by the administrative board for service..... upon findings (a) that he has the mental and physical capacity to perform the duties of such office

Efforts to get a copy of Judge Koota's certification have been futile (see exhibits 4 and 5 in annexed Petition). Since there is no rational reason for denying me access then the logical conclusion is that he was not properly certified. Your Petitioner further contends that Judge Koota did not have either the mental or physical capacity to perform the duties. He died one year and three months after my disbarment, this clearly calls into question his physical and emotional state in handling my proceedings. Also, in question was his mental state. The New York Times articles contained in the annexed Petition as Exhibit 6 demonstrates that his reputation in the community bolstered by his own acknowledgment is one of an unfair, bias and an insanely obsessive penchant for ignoring the truth when it conflicts with his own misguided emotions. In his obituary carried by the N.Y. Times, dated July 23, 1984, a quotation of his was repeated, he said, "I know I have been criticized, called a headline-hunter but I am convinced there are times when a District Attorney must use the newspapers to awaken the community to a menace in its midst, even before be collected enough evidence to prosecute anybody." The facts and the truth did not matter to Mr. Koota.

The second article contained in Exhibit 6 is from the N.Y. Times magazine dated March 19, 1967. It discusses the extent to which be will go to feed his own stereotypes and emotions. He employed trickery and deceit by withholding exculpatory information, so as to gain a conviction. As his record reveals, and as the hue and cry of the civil rights organizations made clear, be was more dishonest when it involved African-Americans. This racial animus could only be the result of a sick mind and explains why he had such a difficult time with the truth in my proceedings. I am an African-American who immigrated from Jamaica, West Indies.

(ii) Art. 4-a section 115 (2) states that;

> **".....No retired justice may serve under any such certification beyond the last day of December in the year in which he reaches the age of seventy six".**

This was reiterated in Art. *4-a* section 125. Upon information and belief, Mr. Koota was already 77 years of age in 1982 when he continued to serve as Special Referee (see Exhibits 2 and *3* of annexed Petition).

(iii) Section 90 of the New York State Judiciary Law, as the caption states, governs admission to and removal from practice (of attorneys) by the appellate division and character committees. Subsection (4) discusses how to treat an attorney convicted of a felony or a serious crime. Subsection (4)(h) says:

> **If the attorney requests a hearing, "the appellate division of the supreme court shall refer the proceeding to a referee, justice or judge appointed by the appellate division for hearing, report and recommendation."**

The same is true under 22 NYCRR 691.7 that requires the matter referred to a referee forthwith. At the time Mr. Koota was referred my case. I was not convicted of a crime. Even though the documents on which I was convicted, and which are discussed later in this memorandum, were dated in 1982 and 83, the indictment occurred in 1985. The referral of my case should not have gone to a special referee but heard by the committee or a subcommittee as dictated by 22 NYCRR 691.4 which governs:

Appointment of grievance committees; commencement of investigation of attorney misconduct, complaint: and procedure. Subparagraph (I) states "the committee or a subcommittee shall proceed to hold a hearing of the case ....."

These circumstances clearly dictate that Mr. Koota's hearing and findings are void. Case law supports this position;

In Salina Const. and Supply Co. v. Richards Const Co., 1951, 104 N.Y.S. 2d 96, it was held that where the term of office of a justice of the Supreme Court expired on December 31, 1950 because he had attained 70 years of age, judgment rendered by him on January 6, 1951 was void, though entered on written stipulation and joint motion of attorneys of record for the parties. This was reinforced in People v. Poole, Co. Ct., 133 N.Y.S. 2d 465 (1984), which has become the basic law, that generally, the powers of a judge of the Court terminate when he ceases to be a judge or when his office or term of office expires.

Judge Koota had ceased being a Judge, *was* not properly certified and in any event his physical and mental health and his notorious bias should have prevented him from hearing any case. I was a pawn in his little game that cheapens my life and the entire judicial process.

POINT TWO

WHETHER OR NOT THE SUBSEQUENT CONTEMPT PROCEEDING AND FINDINGS WERE ALSO VOID, BECAUSE:
(A) THE ORIGINAL DISCIPLINARY HEARING WAS VOID, AND
(B) BECAUSE THE RESULTING ORDER OF DISBARMENT WAS NOT PERSONALLY SERVED AS REQUIRED BY LAW, AND PETITIONER'S CONDUCT WAS IN COMPLIANCE WITH THE COURT RULES.

The Appellate Division rendered its Order of Disbarment, effective the 11th of April 1983. Said Order was then served on my Attorney, Trevor Headly, Esq., who advised me of the Disbarment. Prior to my receiving the actual Order and the accompanying instructions, some three weeks after the disbarment, I appeared on 3 existing cases. I emphasize, these were not new cases, and the appearances were for the sole purpose of winding up my practice.

Section 90 (6) of Art. 4 of the Judiciary Law mandates that "Before an attorney or counselor-at-law is suspended or removed a copy of the charges against him must be delivered to him personally within or without the state."

I respectfully submit that this, even more so, is applicable to the order of disbarment. Failure to comply should excuse your Petitioner's conduct which complied with section 691.10(e) that states, " during the period between the order and its effective date he may wind up and complete, on behalf of any client, all matters which were pending on the entry date."

Because of the foregoing the contempt proceedings should be voided.

This proceeding should also be voided because it would not have been necessary, had it not been for Mr. Koota's findings and the Order of Disbarment. That is, if there was no order of disbarment, then my appearances that resulted in the contempt proceedings, would not be questionable. I submit, that because the original proceeding, as previously discussed in Point I, was void, then the subsequent contempt proceeding is also void.

POINT THREE

WHETHER OR NOT THE ACTS OF WHICH YOUR PETITIONER WAS CONVICTED IN THE UNITED STATES DISTRICT COURT CONSTITUTE A SERIOUS CRIME AS DEFINED BY NEW YORK STATE JUDICIARY LAW ART. 4 SECTION 90 (4)(d), A FELONY AS DEFINED BY SECTION 90 (4)(e), OR AN ACCESSORIAL CONDUCT ONLY AS DEFINED BY THE PENAL LAW SECTION 20.10.

The Indictment, annexed to the petition as Exhibit 10, focused on a VA house, 27 Brooks Avenue, Wyandanch, New York. Nine of the eleven counts of the Indictment allege that I, along with Diane McGhee and Neville Nicholas, filed certain documents or engaged in certain activities designed to defraud the V.A., an agency of the United States. The other 2 counts pertained to the use of a credit card and mail fraud. As the conviction truthfully shows in Exhibits 7,8 and 9 attached, I did not file any documents, I did not engage in mail fraud, and did not try to defraud either the United States Government or the American Express company. As the conviction shows, I simply notarized two documents, unwittingly, and made a legitimate offer to purchase a house. Acts which New York Penal Law sect. 20.10 describes as "Accessorial Conduct" and not a crime. This is the only conclusion that can be drawn from the proceedings. In the indictment, the V.A. alleges that in an effort to secure premises at 27 Brooks Avenue, Wyandanch, New York, Diane McGhee filed several false documents on my behalf. These were all documents necessary to procure the house, a total of nine, which became the basis of the charges of filing false documents. As noted above, the three documents on which I was convicted were for notarizing the two letters and making an offer of purchase. This correctly demonstrates that I was not a party to the scheme but only engaged in "Accessorial conduct". Section 20.10 of the New York State Penal Law exempts from criminal liability, this type of conduct, it states "....a person is not criminally liable

for conduct of another person constituting an offense when his own conduct, though causing or aiding the commission of such offense is of a kind that is necessarily incidental thereto...."

Like the notarized documents, the offer of purchase must be deemed "accessorial conduct." Since I was deemed not to be a part of McGhee's scheme, my offer of purchase was legitimate, particularly since it was sanctioned by Carlos Ortiz of the V.A. who informed me to send the $1,946.80 with the letter, A sum that was never returned.

In similar fashion, the conspiracy conviction under 18 U.S.C, 371 cannot be a "felony" or "serious crime" as above defined by N.Y. State Judiciary Law. If any conduct, as outlined above, is deemed accessorial conduct, then the same section 18 U.S.C. 371 reduces any participation on my part, in the conspiracy, to a "non-crime". It states "....If however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

In taking this to its logical conclusion, if the offense is only "accessorial conduct", then there is no crime. This, in essence, is the holding in the New York State case, People v. Potwora, 1974, 354 N.Y.S. 2d 492 which states; "If a crime necessarily involves the mutual cooperation of two persons, and if, in fact, they have committed the crime, they may not be convicted of a conspiracy to commit it."

What I am guilty of is accessorial conduct, which, though not a crime, would preclude a conspiracy conviction.

All the other allegations in the Indictment were rejected by the Jury.

POINT FOUR

FUNDAMENTAL FAIRNESS MANDATES THAT PETITIONER BE REINSTATED OR BE AFFORDED A HEARING ON THIS APPLICATION FOR REINSTATEMENT TO THE BAR PURSUANT TO RULE 691.11.

Fundamental fairness mandates that Petitioner's motion be granted:

(A) 22 NYCRR 691.11 (a) states "any attorney disbarred after hearings or whose name has been stricken from the role of attorneys pursuant to subdivision 4 of section 90 of the Judiciary Law.... may not apply for reinstatement until the expiration of at least seven years from the effective date of his disbarment or renewal...."

Even though it is entirely within the purview of the Appellate Division whether or not to grant or deny my motion, it has long been recognized that due process requires a hearing on the application for reinstatement of a disbarred attorney (Matter of Mairs, 120 AD 2d 146, 150), particularly where there are disputed factual issues as outlined in Points One through Three above.

(B) The crimes and allegations against your Petitioner are not as serious as those of other attorneys who have been reinstated, see;

- **(I) Matter of Kase, 128 AD 2d 467**
- **(ii) Matter of Fischer, 161 AD 2d 421**
- **(iii) Matter of Gotkin, 179 AD 2d 52**
- **(iv) Matter of Sweeney, 181 AD 2d 626**
- **(v) Matter of Hoffer, 592 NYS 2d 577**

and for my transgressions I have been severely punished, including incarceration in a Federal Prison for one year and one day, and in the Bronx House of detention for 10 days.

(C) All the allegations against your Petitioner occurred between 14 and 15 years ago, even though the criminal matter came to trial 11 years ago. In addition, your Petitioner has resolved all

outstanding matters that could adversely affect his application for reinstatement even where he believes there was no liability on his part.

(D) Your Petitioner has been unable to find meaningful employment since his disbarment and even though I have been fortunate in the support I have received from family and friends, I do yearn for the opportunity to resume my life and be able to return the favors upon which I have been dependent.

(E) Since my disbarment in 1983 I have done and complied with everything required for reinstatement, and do apologize for any way my conduct, prior to the disbarment, may have adversely reflected upon the profession.

CONCLUSION

FUNDAMENTAL FAIRNESS MANDATES THAT THE APPELLATE DIVIDION REVIEW THE ISSUES RAISED HERIN AND EITHER GRANT A HEARING OR RETRO-ACTIVELY VACATE OR MODIIFY MY DEBARMENT IN ACCORDANCE WITH NEW YORK STATE JUDICIARY LAW, ART. 4, SECT. 90 (5)(C).

Dated: Nassau, New York
January 25, 1997

Respectfully submitted,

/S/ Lewis G. P. Ashton.
Pro Se Petitioner

APPENDIX H

SUPREME COURT OF THE STATE OF NEW YORK APPELLATE DIVISION: SECOND JUDICIAL DEPARTMENT

In the Matter of Lewis G.P. Ashton, a disbarred attorney, for Reinstatement to the Bar of the State of New York.	:	AFFIRMATION IN RESPONSE #90-09613

DIANA MAXFIELD KEARSE, an attorney admitted to the practice of law in all the courts of the State of New York, affirms as follows under penalty of perjury:

1. I am counsel to the Grievance Committee for the Second and Eleventh Judicial Districts and I am fully familiar with the instant matter.

2. This affirmation is made in response to the motion of Lewis G.P. Ashton [hereinafter "petitioner"] for reargument of his reinstatement application, denied by this Court on January 2, 1997, or in the alternative, for leave to appeal to the Court of Appeals.

3. Petitioner was disbarred by order of this Court dated April 11, 1983, for, inter alia conversion of escrow fimds [93 A.D.2d 83 (1983)].

4. On June 8, 1983, this Court denied petitioner's motion for leave to appeal to the Court of Appeals.

5. By order dated August 2, 1984, petitioner was held in contempt of the disbarment order and ordered to pay a fine and serve ten days in jail. The Special Referee, after a hearing, sustained three charges, including the charge that respondent had unlawfully practiced law after the effective date of his disbarment.

6. On April 8, 1986, respondent was convicted of four counts of an indictment filed in the United States District Court for the Southern District of New York. Specifically, he was convicted of conspiracy to defraud (one count), in violation of Title 18 USC 371, and filing false statements three counts), in violation of Title 18USC 1001.

7. By order dated May 2, 1986, this Court denied respondent's application to reconsider the contempt finding.

8. On May 22, 1983, District Court Judge Hon. John E. Sprizzo sentenced respondent to one year and one day on the first count of the federal indictment and to five years probation on the remaining three counts.

9. Petitioner then moved for an order declaring him eligible to apply for reinstatement on or after April 11, 1990. This Court denied that motion on December 13, 1990, holding that he had been disbarred again by o ration of law when he was convicted of a federal felony, and, thus, was not eligible to apply for reinstatement until 1993.

10. Petitioner's first motion for reinstatement was denied by this Court on October 6, 1993.

11. A motion to renew and reargue that denial was denied by order dated February 18, 1994.

12. A second motion for reinstatement was denied on January 2, 1997.

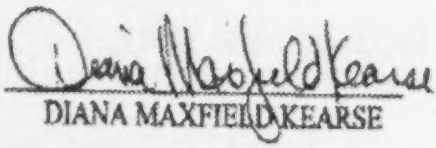
13. Petitioner now argues, inter alia that the Special Referee in his case was that the Special Referee was biased that the contempt should be found to be void; and that his federal conviction does not constitute a crime.

14. Such arguments, in the context of a reargument of a second reinstatement denial, are both frivolous and misplaced. Assuming that they had even a scintilla of arguable merit, they should have, and could have, been raised years earlier in any number of petitioner's prior submissions to this Court.

15. It was well within this Court's discretion to deny petitioner's reinstatement applications, particularly in light of the post-disbarment proceedings in which respondent has been involved, including the contempt and the federal felony conviction.

16. Further, there are no even arguable constitutional questions or issues of statewide interest which would warrant review by the Court of Appeals.

Dated: Brooklyn, New York
February 11, 1997



DIANA MAXFIELD KEARSE

APPENDIX I

**SUPREME COURT OF THE
STATE OF NEW YORK
APPELLATE DIVISION
SECOND JUDICIAL DEPARTMENT**

---x

In the matter of the Application of :
LEWIS G. P. ASHTON, a Disbarred
Attorney, for Reinstatement to the : REPLY
Bar of the State of New York. AFFIDAVIT
: 90-09613

LEWIS G. P. ASHTON,

Petitioner.

---x

STATE OF NEW YORK)
COUNTY OF NASSAU) SS.:

Lewis G. P. Ashton, being duly sworn, deposes and says:

(1) I am the Petitioner in the above captioned matter and submit this Reply to the Grievance Committee's Response to my petition for renewal and reargument, etc, returnable February 21, 1997.

(2) Your Petitioner, respectfully wishes to clarify paragraph 13 of Attorney Kearse's response. Not only is your Petitioner arguing that the contempt proceeding should be found to be void, and that the federal conviction does not constitute a crime, particularly in New York State, I also argue that the initial disciplinary proceeding should also be found to be void. The reasons are set forth in the Petition for reargument and its supporting memorandum of law.

(3) In paragraph 3 of her response, Attorney Kearse has reminded the Court that petitioner was disbarred April 11, 1983, for, inter alia, conversion of escrow funds. I again respectfully ask the Court to note the fact that there were only two instances of escrow conversion alleged at the disciplinary hearing in the amount of $2,000.00 each, and for the following reasons should not be deemed conversions;

(A) One instance involved a client, Hazel Tabois, whose matter was concluded years before the hearing, who did not have a complaint but who was sought out by Mr. Finnerty and Mr. Harrow of the counsel's office after I furnished them with her name in explaining her transaction as it appeared in my escrow statement. She was intimidated, cajoled and manipulated into testifying at the disciplinary proceeding. I aver categorically that she had no complaint, there was no conversion, and her matter had been resolved amicably inspite of her reneging on a contract.

(B) The second instance involves the premature withdrawal of the other $ 2,OOO.OO, not as a personal conversion, but in order to transfer the file to another attorney in anticipation of leaving the jurisdiction temporarily, the consequence of a domestic dispute I was experiencing.

1, again, respectfully submit that if the disciplinary proceeding was appropriately conducted by the subcommittee or even a referee who was properly certified, within the legal age, of sound physical, mental and emotional health and who was without the bias and racial animus of Mr. Koota, the findings would have been different.

(4) In paragraph 14 of her response, Attorney Kearse suggests that because the arguments put forth in my petition and annexed memorandum were not raised in a prior petition then I am now precluded from now making the argument, I respectfully submit that is just not true, for the following reasons;

(A) If she is implying that I am so precluded by a Statue of Limitations, I am not. I respectfully submit that there is no Statute of limitations. Just as the Court or the Grievance Committee can raise atrocities of the Petitioner at anytime in determining discipline or reinstatement, so can, the Petitioner raise abuses of the process at any time. Even if there was an applicable Statute of limitations, it would have been tolled. Once I petitioned for reinstatement pursuant to N.Y.S. Law 22 NYCRR 691.11, and was denied for the same erroneous reasons that caused my disbarment, or would have caused my disbarment. This creates a continuing violation, which tolls the statute upon each denial. A statute of limitations would also have been tolled April 4, 1994 when documents released by the V.A. evidenced a clear conspiracy *with* the Veteran's Administration to

libel and defame me by manipulating evidence and distorting information. It was at this time that the devious machinations with the common purpose of destroying your Petitioner surfaced.

(B) Because these actions were covert, and I acted promptly, as dictated by law, the doctrine of laches is also inapplicable. Sect. 691.11 permits an application 7 years after the disbarment. My initial petition was in 1990, 7 years after my disbarment. To raise the issues now being raised prior to 4/4/94, as previously- discussed, would have been frivolous. At that point in time the extent of the violations and collusion of which I now complain were deliberately concealed from your Petitioner. Because of the utmost respect I have for the judicial process. I could not suspect this type of malicious behavior prior to the date the documents were released pursuant to my request under the Freedom of information and Privacy Acts.

(C) The Grievance Committee should also be collaterally estopped from asserting either statute of limitations or Laches since they contributed to the misconduct, participated in the illegal proceeding, and they continued to conceal the information of which I now complain, even after my several petitions.

(5) Attorney Kearse, in paragraph 16 of her response, states that "there are no even arguable constitutional questions or issues of statewide interest, which would warrant review by the Court of Appeals". This in essence is to ignore the disparity with which African Americans are disciplined, especially those of Jamaican descent. If the reasons for this include the type of conduct of which I complain; the cajoling of witnesses without a complaint to testify, the appointing of referees with a clear bias and racial animus, and among other things the manipulation of the laws, and facts to reach what appears to be a predetermined conclusion, then the process needs examining. It is a clear violation of the constitutional guarantee of due process of law that mandates a fair hearing. This, upon information and belief, is being denied a significant portion of the community especially in the Second Judicial Department either because of race, or ethnicity. Because a self-examination may be uncomfortable, the Court of Appeals maybe even the Chief Justice. may want to examine the process.

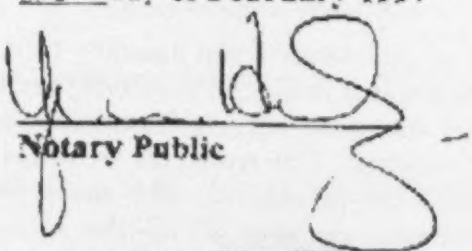
I also respectfully submit, that If It is deemed necessary, the Court of Appeals may also wish to address the issue of whether or not abuses in the initial disciplinary proceeding should void the discipline imposed even where the said abuses where raised for the first time in a petition for reinstatement that was timely filed.

Wherefore, your Petitioner respectfully prays that his petition be granted.

Respectfully submitted

/S/ Lewis G. P. Ashton

Sworn to before me this
12th day of February 1997



Notary Public

YVONNE HERNANDEZ
Notary Public, State of New York
01HE5061168
Qualified In Suffolk County
Commission Expires June 3, 9[illegible]

APPENDIX J

382 Clinton Avenue
Cedarhurst, N.Y. 11516
January 23, 1995

Martin H. Brownstein
Clerk of the Court
Appellate Division, Second Judicial Department
45 Munroe Place
Brooklyn, N.Y. 11201

RE: Lewis G.P. Ashton, a disbarred Attorney

Dear Sir,

I am in receipt of your letter dated January 12th, *1995*, and thank you for your very prompt response. However, the copy of the check you enclosed is not the check missing from both your ifie and that of the Grievance Committee. I do apologize for referring to it as number 29 on Petitioner's list of exhibits. The check in issue was referred to, in one instance, on page 67 of the minutes of the Griviance Committee's direct examination of Mr. Hamilton (see enclosure). There, Mr. Harrow referred to it as Exhibit I, bearing number 387 and drawn on my account. As previously noted, it was payable to John Campbell and not Hazel Tabois.

I also seek:

(a) A copy of Mr. Koota's certificate by which he was certified to act as a referee, issued by the administrative board, as required by section 115 (1) of the Judiciary law. If he was not a resident of your department, kindly advise me of the department of which he was a resident.

(b) A copy of the order, describing his authority and assigning him to act as a referee in my case, as outlined in your letter of January 12th, 1995.

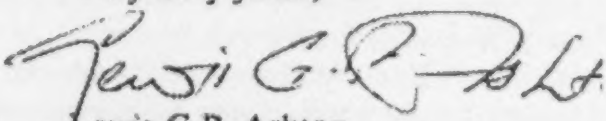
(c) To arrange for an opportunity to review your public files of disciplined attorneys in order to ascertain the information requested in items B,C and D of my letter of January 9th, 1995 regarding the charges and sanctions imposed on disciplined attorneys and their efforts to be reinstated, where applicable.

(d) As an additional request, please furnish the names and addresses of all persons and/or entities that have requested information from my file and the disposition thereof, and

(e) Any information received from the Department of Veteran's Affairs or any other agency that may have impacted upon my status with the Bar Association.

Your continued cooperation will be greatly appreciated.

Very truly yours,



Lewis G.P. Ashton
(516) 374-5746

(718) 875-1300

Appellate Division
Supreme Court of the State of New York
Second Judicial Department
45 Monroe Place
Brooklyn, N.Y. 11201

MARTIN BROWNSTEIN
Clerk of the Court

ARNOLD EDMAN
MELL E. HARRIS
Deputy Clerks

February 9, 1995

Lewis G. P. Ashton
382 Clinton Avenue
Cederhurst, N.Y. 11516

Dear Mr. Ashton:

In response to your letter dated January 23, 1995, the check in question, payable to John Campbell, is not in the file. We do not have certifications from the 1980's; you may wish to contact the Office of Court Administration to see if they still have it.

Enclosed are copies of the orders of this court designating Justice Koota to serve as Special Referee, dated October 20, 1981 and February 10, 1982.

If you wish to examine the file of a specific attorney who has been disciplined, you must name the attorney and give the court advance notice. We do not maintain records of persons whose files have been requested.

With respect to item (e), any "information" that may have been received would be part of the file, which you have examined. We have not received any ex parte communications.

Yours truly,
/S/ MARTIN H. BROWNSTEIN
Clerk

APPENDIX K

382 Clinton Avenue
Cedarhurst, N.Y. 11516

February 22, 1995

Mr. Michael McEnny
Office of Court Administration
80 Center Street, 5th Floor
New York, N.Y. 10013

RE: Certification of Special Referee Aaron Koota

Dear Sir,

I have been attempting to locate a copy of all certification issued to Justice Koota by the administrative board pursuant to Judiciary Law Section 115(1). The Appellate Division for the Second Judicial Department, where he resided, is unable to furnish me with any copy. If you can, please send a copy of each to my attention at the above address.

Very truly yours,

Lewis G.P. Ashton
(516) 374-5746

APPENDIX L

N.Y. TIMES Dated July 23, 1984

Aaron E. Koota, 78, Is Dead; Former Judge and Prosecutor

By PETER KERR

Aaron E. Koota, a former justice of the New York State Supreme Court and a former Brooklyn District Attorney, died Sunday night at his son's home in Port Washington, L.I. He was 78 years old and a resident of the Flatbush section of Brooklyn.

During his four-year tenure as Brooklyn's chief prosecutor, Mr. Koota developed a reputation as a tough crime fighter who was criticized by such groups as the New York Civil Liberties Union for what they said was insensitivity to the rights of the accused and for seeking publicity.

Assigned to Rackets Bureau

Mr. Koota was born in Brooklyn to Russian immigrants. A graduate of Boys High School he received his law degree, cum laude, from Brooklyn Law School in 1927. He received a master's degree from the law school the following year.

Mr. Koota joined the Kings County District Attorney's office in 1950 and was assigned to the rackets bureau, which was the investigating Harry Gross, a bookmaker who was later convicted of running a multimillion-dollar gambling operation in collusion with policemen. The case led to a housecleaning of the Police Department's gambling squad and resulted in the indictments of 188 policemen and gamblers, 150 of whom were convicted.

In 1955, he was named head of the {.....} bureau and held the job until 1963, when District Attorney Edward S.

Silver of Brooklyn made him his chief assistant. When Mr. Silver resigned, Mr. Koota became Acting District Attorney and with the help of the Stanley Steingut, the Brooklyn Democratic leader was nominated and won election to the post in 1964.

In the next four years, Mr. Koota launched several major investigations, including bookmaking, fraud among Board of Education contractors, and the penetration of the legitimate businesses by organized crime.

In those years, he also developed a penchant for publicity and for controversy. In spring of 1966, a time when the use of new psychedelic drugs was attracting widespread concern, Mr. Koota announced that LSD was being produced in the science laboratories of the city's high schools.

"I know I have been criticized, called a headline-hunter," Mr. Koota later said, "but I am convinced there are times when a District Attorney must use the newspapers to awaken the community to the menace in its midst, even before he collected enough evidence to prosecute anybody."

In 1968, Mr. Koota was appointed to the State Supreme Court, where he served for eight years.

In addition to his son, Dr. Gordon Koota, he survived by his wife, Beatrice Koota; a daughter, Hester Donziger of Jacksonville, Fla., and four grandchildren.

A funeral is scheduled for Tuesday at 1 P.M. at the Riverside Chapel, 310 Coney Island Avenue, Brooklyn.

THE NEW YORK TIMES MAGAZINE
Dated March 19, 1967

Considering Koota's pride in what he calls "sniffing for trouble," it is a little ironic that in the last year the two cases that have given him the biggest headlines -- to the point of obscuring his record as a racket-buster and damaging his image as a community guardian -- are ones that the Police Department rather than the district Attorney and his investigators have sniffed out. Both are deeply involved with an issue that barely existed when Koota became an Assistant District Attorney: civil rights.

First came George Whitmore, a 20-year-old Negro arrested by Brooklyn police for the attempted rape of Mrs. Evelyn Borrero. Under police questioning Whitmore allegedly confessed to the rape-slaying of the elderly Mrs. Minnie Edmonds and then supposedly admitted he had committed one of the most sensational crimes of the decade -- the murder of two New York career girls, Janice Wylie and Emily Hoffert, in their East side apartment.

District Attorney Frank Hogan of Manhattan took over the Wylie-Hoffert side of Whitmore's case and wound up throwing out the Brooklyn confession, calling it "full of holes." The police later arrested another man, Richard Robles, as the killer, and Hogan's office prosecuted him and won a conviction.

Meanwhile, in Brooklyn, in spite of the tremendous hue and cry from civil-rights groups and the Civil Liberties Union for Whitmore's release -- he had by now, on the advice of his attorney, recanted all his confessions and claimed that the police had used torture to extract them -- District attorney Koota refused to drop the other charges. "Those first two confessions had the ring of the truth in them." he still insists.

He first prosecuted Whitmore for attempted rape and convicted him. When Whitmore's lawyers produced evidence of race prejudice in the jury, Koota took him back to court and convicted him again. He then prosecuted him for the murder of Mrs. Edmonds, and this trial ended in a hung

jury. By now the Supreme Court had handed down its Miranda decision, which holds that any confession extracted from a prisoner before he has been informed of his right to counsel is inadmissible as evidence. Koota was thus forced to abandon the Edmonds case against Whitmore, although he was by no means convinced of Whitmore's innocence. Whitmore is currently free on bail while his attorneys await a decision on their appeal of his attempted rape conviction.

The second case began in the riots in Brooklyn's Bedford-Stuyvesant Negro ghetto last summer when police arrested Ernest Gallashaw for the murder of 11-year-old Eric Dean. Three witnesses, all Negroes, said they saw Gallashaw fire a zip gun at the police and mistakenly kill young Dean. Koota was reported as saying he had "an airtight case" against Gallashaw. But a few days later newspapermen interrogating the witnesses, two of whom were children, found them contradicting their previous statements, and at the trial defense attorney Paul O'Dwyer produced witnesses who said that Gallashaw was sitting on the stoop in front of his house when the crime was committed. Gallashaw was acquitted. during the trial Koota's office was picked and he was accused of being everything from a liar to a member of Ku Klux Klan. Koota makes a vigorous defenses of his conduct in both the Whitmore and the Gallashaw cases. "People who say I should never have taken either of the cases to court don't understand the function of the District Attorney. I am not a judge. There are 10,000 arrests made each year in Brooklyn. If the evidence produced by the police or by my own investigators id sufficient to take a case to court, it is my duty to do so and let a judge and jury decide the accused man's guilt or innocence."

When Koota talks about Whitmore and Gallashaw, one gets the uneasy feeling that they are lumped in his mind with the Profacis and the Gallos -- they are criminals, arrested by the police, with sufficient evidence to persuade a grand jury to indict them. Under our adversary system of law they are therefore fair game for his office. The goal, from his side is conviction -- which will look good on his scorecard, and quell those critics who murmur about too many acquittals. (After dismissing these critics as

irresponsible and irrelevant, Koota could not resist adding triumphantly, "Since January, 1966, our conviction rate has been over 80 per cent.") On the other side, it is the defense lawyer's job to defeat Koota's assistant D.A. in the courtroom combat.

More than a few observers who have watched this system in action wonder aloud about the fate of the truth in the ensuing clash -- and there is no doubt that when you listen to lawyers talk, guilt or innocence does sometimes seem irrelevant to them. When so charged, of course they will argue the truth "emerges" from the judicial conflict. But in Whitmore's case some aspects of Koota's tactics, although permissible under the prevailing system, have disturbed those sensitive to the course of justice.

His stubborn refusal to investigate the policemen who questioned Whitmore provoked a good deal of criticism. In the trial itself he never revealed to either the jury or the defense lawyers an F.B.I. report that disputed the prosecution argument that a key piece of evidence, a button was from Whitmore's coat. This might be good tactics if the target is Joe Colombo (though many lawyers would disagree here, too), but when the quarry is a penniless Negro drifter the result is inevitably, and justifiably, anger and outrage in the Negro community.

Although Koota can hardly be called a defender of the police (no one has kept accurate count, but his investigations have resulted in the dismissal or resignation of perhaps 200 of Brooklyn's finest since the Gross days; among other things, he blew up a widespread motorcycle patrol ticket-fixing racket in 1954 and uprooted extensive corruption in the
Brooklyn morals squad in 1958), current relations between the police and his office are said to be remarkably good -- better than they have been in a decade. One reason, no doubt, is his shift in attitude toward recent Supreme Court decisions extending new protection to the rights of the accused in search and seizure and confession.

APPENDIX M

At a Term of the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department held in Kings County on February 10,1982.

(NOT TO BE PUBLISHED)

HON. MILTON MOLLEN, Presiding Justice,
HON. VINCENT D. DAMIANI,
HON. VITO J. TITONE, *Associate Justices*
HON. LEON D. LAZER,
HON. LAWRENCE J. BRACKEN.

In the Matter of Lewis G. P. Ashton, an attorney and counselor at law, admitted under the name Lewis George Ashton.

The Grievance Committee for the Second and Eleventh Judicial Districts,

Petitioner;

Lewis G. P. Ashton,

Respondent.

Order

In the above entitled disciplinary proceeding, this court, by an order and decision, both dated October 20, 1981, having referred the issues by the petition and the answer to Hon. AARON E. KOOTA (a retired Justice of the Supreme Court), 186 Joralemon Street, Brooklyn, New York 11201, as Special Referee, to hear and to report, with his findings upon each of the issues; thereafter, the above named petitioner having moved, by a notice of supplemental petition, dated December 16, 1981, Inter alia, to discipline the respondent upon the charges set forth in the supplemental petition annexed to the said notice of supplemental petition; and the respondent having filed an answer thereto;

Now, upon the said supplemental petition, affirmed December 16, 1981; the said answer, dated December 30, 1981; and upon all the papers filed herein; and Richard Harrow, Esq, having appeared of counsel for the petitioner and Messrs. Headley & Zeitlin, Esqs., having appeared of counsel for the respondent, due deliberation having been had thereon; and upon this courts decision slip heretofore filed and made a part hereof, it is

ORDERED that the issues raised by the supplemental petition and the answer are hereby referred to the said Hon. AARON E. KOOTA, as Special Referee, to hold hearings on the issues presented on this supplemental proceeding as well as on the original proceedings and to report his findings on each of the issues.

Enter:

/s/ Irving N. Selkin
Clerk of the Appellate Division

APPENDIX N

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION:
SECOND JUDICIAL DEPARTMENT

In the Matter of LEWIS G.P. ASHTON, an attorney and counsel-at-law, admitted under the name LEWIS GEORGE ASHTON,

GRIEVANCE COMMITTEE FOR THE SECOND AND ELEVENTH JUDICIAL DISTRICTS,

Petitioner,

LEWIS G. P. ASHTON,

Respondent.

REPORT OF SPECIAL REFEREE

AARON E. KOOTA
Special Referee

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND JUDICIAL DEPARTMENT

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In the Matter of Lewis G. P. Ashton,
an attorney and counselor-at-law,
admitted under the name Lewis George Ashton,

GRIEVANCE COMMITTEE FOR
THE SECOND AND ELEVENTH
JUDICIAL DISTRICTS,

REPORT OF
SPECIAL REFEREE

Petitioner,

LEWIS G. P. ASHTON,

Respondent.

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TO THE HONORABLE PRESIDING JUSTICE AND ASSOCIATE JUSTICES OF THIS COURT:

The undersigned, Special Referee, appointed herein reports as follows:

Chronology and Nature of this Proceeding

Lewis G. P. Ashton (hereinafter referred to as "Respondent") is an attorney and counselor—at—law who was admitted to practice by this Court on May 5, 1976.

The petition herein prays that Respondent be disciplined for his professional misconduct upon four charges therein set forth. The petition was verified on July 8, 1981. Respondent's answer was sworn to on August 19, 1981.

This Court by its order dated October 20, 1981 referred the issues raised by the Petition and Answer to me, to hear and report with my findings upon each of these issues.

A supplemental petition verified December 16, 1981 containing two additional charges was filed. Respondent's Answer thereto was dated December 30, 1981 and filed on January 11, 1982.

By its order dated February 10, 1982, the issues raised by this supplemental petition were referred to me to hold hearings thereon as well as on the original petition and to report my findings on each of the issues.

A preliminary conference with respective counsel was held on November 18, 1981. Thereafter, hearings were held before me on December 16, 1981, December 17, 1981, January 14th, March 15th, March 16th, March 19th and April 14, 1982.

At said hearings, the petitioner appeared by its attorney Frank A. Finnerty, Jr., Richard C. Harrow, of counsel, Respondent by his attorneys Headley & Zeitlin, Esqs., Trevor L.F. Headley of counsel.

Five witnesses testified in support of these charges and thirty exhibits in evidence submitted by petitioner.

Respondent testified in his own behalf. He called no other witnesses. He offered two exhibits received in evidence.

The minutes comprise 380 pages of testimony, paginated consecutively and an exhibit containing testimony at a Grievance Committee hearing of 106 pages.

This matter was finally submitted to me on July 12, 1982 with the filing of briefs.

The Charges and Answers thereto

CHARGE ONE

On or about July 24, 1980, Respondent received $2,000.00 from Stephen Feldman, Esq., to be held in escrow, which he failed to do, and converted the money to his own personal use and benefit.

ANSWER TO CHARGE ONE

Denies the allegations; states that the sum of $2,000.00 was deposited in his escrow account, but was withdrawn

in anticipation of his leaving the jurisdiction for medical reasons and for the sole purpose of expediting a real estate closing should it become necessary in his absence

CHARGE TWO

On or about June 23, 1979, Respondent was retained by Jean Morris to represent her brother in an appeal from a criminal conviction. Respondent failed to perfect the appeal and failed to substitute himself as counsel for the Court appointed Legal Aid Attorney. Respondent received a fee of $2,650.00 from Jean Morris, none of which has been repaid.

ANSWER TO CHARGE TWO

The answer in substance is a general denial. He admits his retainer by Jean Morris, states that more than half of the fees received was paid out as cost of minutes; he interviewed the brother several times at Rikers Island, and secured his release on bail pending an Appeal; that in anticipation of his leaving the jurisdiction he left the files with attorneys Headley & Zeitlin, who advised him that Jean Morris had retained another attorney, that there are no monies due Jean Morris, and that there was a Court substitution of himself for Legal Aid.

CHARGE THREE

Respondent issued a check on his escrow bank account which subsequently "bounced" knowing that he did not have sufficient funds in that account to cover said check. On or about July 23, 1980, Respondent issued a check for $15,000.00 drawn on his escrow account, payable to John Campbell. This check "bounced" and was not made good until January 1981.

ANSWER TO CHARGE THREE

The check for $15,000.00 was designed to evidence debt owing to John Campbell, Jr.; the transaction was a loan from John Campbell; the check "bounced" because his ex-wife made an unauthorized withdrawal from another account from which he intended to withdraw the funds; that full restitution was made in December, 1980 and there was no intent to deceive or defraud anybody but was an acknowledgment of a debt.

CHARGE FOUR

This charge avers that Respondent failed to cooperate with the Grievance Committee for the Second and Eleventh Districts in its investigation of complaints of professional misconduct. I will not elaborate upon this charge since it was withdrawn by Petitioner in the interest of justice (Stenog. Minutes p. 176).

CHARGE FIVE

On or about December 12, 1979, Respondent received $2,000.00 from Hazel Tabois to be held in escrow pursuant to a contract for sale of realty, Respondent failed to hold said funds in escrow and converted them to his own personal benefit and use.

ANSWER TO CHARGE FIVE

Denies the allegations except that he admits he received the sum of $2,000.00 from Hazel Tabois.

CHARGE SIX

Respondent failed to maintain a proper special account as required by Section 691.12 (a) of the Rules of this Court, governing the Conduct of Attorneys, and converting client's funds; that he failed to produce his escrow records although so directed by Judicial subpoenas dated January 10, 1981 and December 3, 1981; that between June 4, 1979 and December 8, 1980 Respondent's escrow account at the European American Bank was overdrawn on forty-eight occasions.

ANSWER TO CHARGE SIX

In substance, a general denial.

Initially, I will state my findings and conclusions and will thereafter discuss-the evidence on each charge seriatim.

I understand the applicable principle in this disciplinary proceeding to be that the questions involved are to be determined on a fair preponderance of the evidence and the reasonable inferences to be drawn therefrom.

Feola v. N.Y. State Bar Assn. (37 AD. 2, 789, 327, NY.S. 2 654).

I find that each of the five charges herein, with the exception of Charge Four (withdrawn), has been proven by petitioner by more than a fair preponderance of the evidence, that each be sustained and I so respectfully recommend to this Court.

Respondent

He is 35 years of age. He was born in the West Indies. His father formerly a school principal, is retired and in real estate business (180).* His mother is now a school principal in the West Indies (180).

He came to the United States in 1966, and entered Howard University in Washington, D. C. He received his law degree, J.D. from George Washington University.

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*numbers in parentheses refer to the pages of the minutes of the testimony.

He is married. He has two children by a previous marriage, one 11 years of age, and the other 3, (180).

He was admitted to the Bar in May, 1976 in this Department. His office was at 175-20 Hillside Avenue, Queens, until August 1980. In June 1981, he opened a law office at 140-11 Rockaway Boulevard, Queens (180).

His practice is 80% in the Criminal Law (182). This is the first time he was the subject of any charges or any disciplinary proceeding (183).

I shall now consider the charges seriatim and review the evidence pertinent thereto.

CHARGE ONE

Conversion by Respondent of $2,000.00 in escrow received by him from Stephen Feldman.

Ventor Holly testified in substance as follows:

He is a training coordinator for the New York City Housing Authority having worked there for some twenty years (7).

In July 1980, he contracted to buy premises 133 West 122nd Street, New York City, and was represented by Stephen Feldman, his attorney.

The vendor was represented by Respondent (8).

The contract for the sale is in evidence as Petitioner's Exhibit 2 (11).

At the contract closing on July 24, 1980, he made a down payment of $2,000.00. This was represented by a check dated July 24, 1980, made by his wife in the sum of $2,000.00 payable to Respondent "attorney and escrowee". (Pet. Exh. 3, 15). the check was endorsed by Respondent under the legend "Deposit on contract Premises 133 West 134th Street to be held in escrow", and deposited in his escrow account at European American Bank.

Respondent's answer to Charge One, admits this deposit of $2,000.00 in his escrow account.

Petitioner's Exhibit 6 (28) are statements of the European American Bank of Respondent's escrow account further evidencing the deposit therein of the $2,000.00. This exhibit contains the monthly statements of the escrow account from July, 1980 to December, 1980, when the account was closed (28).

Certain objections to the title appeared and title was never closed (19). He then retained another attorney who wrote Respondent to return the $2,000.00 within five days (20). The $2,000.00 deposit was never returned (19, 20).

Petitioner's Exhibit 4 (23) is a check drawn by Respondent on his escrow account dated August 29, 1980, payable to cash in the sum of $2,000.00, and bearing Respondent's endorsement, evidencing the withdrawal by Respondent of the $2,000.00.

The bank statement of the escrow account (Pet. Exh. 6) shows (41-43) that on the date the $2,000.00 was deposited, August 2, 1980, there was an existing balance of some $12,000.00. On September 2, 1980, the balance was $483.73, indicating that a portion of the Holly deposit had been converted. Between September 15, 1980 the escrow account was overdrawn. On December 8, 1980 this account was closed.

Testimony of Respondent as to Charge One

He admits receiving the $2,000.00 from Holly's attorney, R. Feldman to be held in escrow pending closing of title, but denies converting it to his own personal use (184).

The basis of this $2,000.00 was a real estate transaction in which he represented residents of state of- Georgia who were the sellers. The purchaser was the witness Holly, whose attorney was Stephen Feldman (185, 186).

The contracts were mailed to his clients in Georgia. In the meantime, he deposited the check for $2,000.00 in his escrow account at European American Bank (186), on or about August 12, 1980 and withdrew it in September, 1980 (202).

In August, 1980 he was in the process of ending his law practice and transferred all his files. There were problems in his personal life, which prevented him from servicing his clients properly (186, 187).

The problems involved his second marriage. He was having difficulties with his wife (188). Because of his emotional and physical problems he was advised by his physician to give up his practice, which he did in 1980 and went to Jamaica to recuperate, in October or November, 1980 (190).

He returned to New York on December 23, 1980 (190). He has been in New York since then.

On his leaving New York he turned over some 250 civil cases in which he was the attorney to a Mr. Stephen Fink, an attorney at Queens Boulevard, New York (191).

Mr Fink did not have a real estate practice, so he referred Respondent and the Holly case to Mr. Fink's associate Mr. Ceppertelli. He left his files with Mr. Fink. In this file was a money order for $2,000.00 which was the escrow deposit money he had received in the Holly case. (193).

When he discussed the Holly case with mr. Fink, there was no money order in the file (194). He gave Mr. Fink the file with intent of giving him a check for $2,000.00 (194). But Mr. Fink told him he does not do real estate, but that his partner Mr. Ceppertelli did, and he, Mr. Fink would accept responsibility forthe file (195).

Respondent then left the Holly file with Mr. Fink. There was no money order or check for $2,000.00 in the file at that time (195).

Mr. Ceppertelloi did not however, take the Holly case (196). Respondent intended to close the escrow account at European American Bank before leaving for Jamaica. He then withdrew the $2,000.00 from the escrow account in the form of a check for $2,000.00 and placed the check in the Holly file.

He then turned the Holly file with the check in it to one of his former law associates, a Mr. LaSister (196, 197, 199). The check was payable to Respondent (1970. He was not "very happy with this particular file (Holly)", because it was one that was not pursued diligently upon his leaveing. He therefore, telephoned Mr. Stephen Feldman, Holly's attorney, from Jamaica, to explain that the file was with Mr. LaSister (197, 198).

Mr. Feldman had complained to the Bar Association that he could not reach Respondent, and he advised Respondent of this in their long distance phone conversation (199), and Respondent explained to him where the file was and that whenever Mr. Feldman was ready the title could be closed (199).

After Respondent returned to New York in March, 1981, and called Mr. Feldman, the latter stated to him that he no longer represented Mr. Holly, he did not know who Mr. Holly's new lawyer would be (200).

When the Bar Association finally reached him, he explained to them that he was ready either to return the $2,000.00 or close the real estate deal (201).

Respondent's Cross Examination on Charge One

Note, Respondent did not produce the original $2,000.00 check which he said he had put in the file, dor did Mr. LaSister or Mr. Fink or Mr. Ceppertelli corroborate his testimony.

He does not recall whether the $2,000.00 was in the form of cash or check (202).

Petitioner's Exhibit 4 in evidence (23) is a check dated August 29, 1980 drawn by Respondent on his escrow account payable to cash for $2,000.00 Respondent could not recall whether this was the $2,000.00 escrow money but said it could be (203).

People's Exhibit 6 in evidence is the bank statement of European American Bank showing this escrow account. (28).

The reverse side of the check for $2,000.00 (Pet. Exh. 4) shows tht it was negotiated on September 2, 1980 (204). Petitioner's Exhibit 6 - the bank statement under date of September 2, shows that a check for $2,000.00 was cashed on September 2, 1980 (204). Although he has no independent recollection, Respondent admitted that this $2,000.00 represented the escrow money (205, and that it was cashed by him on September 2, 1980 at the bank, and he received the $2,000.00 personally (206). He bought a money order for $2,000.00 with these escrow funds and placed it in his Holly file, which he gave to his associate Mr. LaSister (207). He cashed the money order and returned the $2,000.00 to Mr. Holly during this instant hearing (207).

Respondent then testified that on August 29, 1980,he drew the check for $2,000.00, cashed it and deposited the $2,000.00 in cash in the Holly file and took it to Mr. Fink's office. When he was told that Mr. Ceppertelli would represent him on the transaction,he purchased a money order for $2,000.00, and before leaving for Jamaica placed it

in the Holly file and gave the entire file to Mr. LaSister (209, 210).

He admitted that the $2,000.00 deposited by him in his escrow account on August 12, was the escrow money received by him in the Holly transaction (210).

Between August 12, 1980 and October, 1980, this escrow account on seven different occasions fell below $2,000.00 (211).

An examination of the monthly statements (Pet. Exh. 6) of the escrow account shows that on August 12, 1980, when the $2,000.00 was deposited there was a balance of about $12,000.00. On September 2, 1980 the balance was $483.73, indicating that at lest part of the $2,000.00 deposit had been converted by Respondent.

Between September 15, 1980 and December 2, 1980 the escrow account ws overdrawn. The account was closed on December 8, 1980. On August 29, 1980 seventeen days after respondent deposited the Holly's $2,000.00, Respondent wrote a check to cash for $2,000.00 (Pet. Exh. 4).

When he turned the Holly file to LaSister the money order for $2,000.00 was in it (210). The $2,000.00 we are discussing was the escrow money (221).

When he returned to the states in December, 1980,the money order was still in the file. He deposited the money order for $2,000.00 in his personal checking account (217).

I do not credit Respondent's testimony. I find that Respondent by his manipulating of the escrow account converted the $2,000.00 deposit. Restitution is not a bar to this proceeding and charge. (Rule 691.8 of the Rules of this Court). This charge should be sustained.

At the Hearing of December 17, 1981 - Respondent paid the $2,000.00 to Mr. Holly.

At pages 67 et. seq. of minutes of this hearing, it appears that at a side-bar conference, Respondent stated he was ready to return the $2,000.00 to Mr. Holly and his reason for not returning it sooner was because he did not know to whom to send it, and also that he did not know the

real estate transaction was off, and thought that he was still holding the money in escrow and he was not authorized by his client to return the money to Mr. Holly. Respondent advised his clients that he was returning the $2,000.00.

The $2,000.00 was accepted by Mr. Holly without prejudice to Charge One. I advised Respondent that the return of $2,000.00 cannot affect the question of whether Charge One was sustained, but that I would call this in my report to the attention of this Court on the entire question of mitigation of sanctions if this charge was sustained (67 - 71). (Respondent knew that the $2,000.00 down payment was to be kept in escrow until the closing of title (224).

CHARGE TWO

Neglecting a legal matter and failing to return an unearned fee.

Jean Morris testified as follows:

for the past five years, she has been employed by Elleys manufacturing Corp.

She went to school to the 7th grade.

In June, in 1979, her brother Michael Joseph was convicted of a crime, a sexual offense. Thereafter, she retained Respondent to prosecute the appeal (45). His fee was $3,000.00. When she protested that it was too high, he replied that $1,200.00 would be used to pay for the trial minutes and his fee would be $1,800.00 (47).

In June, 1979, she paid Respondent $2,000.00 on account, $1,200.00 for the minutes and $800.00 as a retainer fee (47, 48).

Petitioner's Exhibit 7, is Respondent's receipt, dated June 30, 1979 for the $2,000.00 (48).

In January, 1980 she paid Respondent an additional $650.00 for which she received a receipt (Pet. Exh. 8 in evidence, 51).

In May, 1980, her brother's bail was revoked (51) and she spoke to Respondent about this (52).

Respondent promised to see her brother in jail, but did not do so (52). Respondent never proceeded with the

appeal and she never got any of her money back (53).

The appeal was then prosecuted by Legal Aid (54). Petitioner's Exhibit 9 is an order of this Court appointing Legal Aid to conduct the appeal and directing the Court reporter to furnish the minutes without charge (55). After the revocation of bail, she did not hear from Respondent for several months. She then received a call from Mr. Headley (Respondent's attorney herein) that Respondent had left the trial minutes with him (56).

Respondent told Mr. Headley his problems were so severe he might have to give up his law prctice. (57).

Mr. Headley offered to prosecute the appeal for the same fee. She refused stating that she had already paid Respondent and would not retain Mr. Headley, wherupon he retaurned the trial minutes to her (58, 59).

She never received any part of the money she had paid Respondent (60). After her brother's conviction, a Certificate of Reasonable Doubt issued by the trial court on October 9, 1979 resulted in his release on bail. The bail bond was forfeited for brother's failure to appear at a subsequent hearing (62, 63).

Testimony of Respondent as to Charge Two

Respondent testified as follows:

He admitted that he was retained by Jean Morris on June 23, 1979 to prosecute the appeal and that he did not perfect the appeal (2280. He told Mrs. Morris that he would pay for the trial minutes. Mrs. Morris did give him $2600.00 but his fee, including the cost of the minutes would be $5,000.00 (231). he accepted the $2,600.00 as a retainer only, and thought Mrs. Morris understood that (231).

For this $2,600.00 he visited the brother at Rikers Island jail several times (232). He also applied for a Certificate of Reasonable Doubt, which was granted and bail was fixed at $5,000.00 (232). Petitioner's Exhibit 21 (119) annexed to the

answer, is a Certificate of Reasonable Doubt issued by Justice Lentol on October 9, 1979 releasing the brother on bail pending the appeal (118,119). Respondent stated that he had obtained the Certificate. (121). The stay contained in the Certificate was to terminate 120 days thereafter. Respondent obtained an extension. During this extended period Respondent contemplated retiring from practice and transferred som 500 cases including the brother's appeal to Mr. Headley (122, 235, 236). The appeal had to be perfected in 120 days but in the meantime, the brother was required to appear in Court on the days fixed (233, 234). His failure to appear on one of these days resulted in the bail being forfeited and his remand (234, 235).

Mrs. Morris told him she would retain another attorney (236). He did not give Mr. Headley any part of the $2,600.00 paid to him by Mrs. Morris. Out of this sum, he paid $1,200.00 for the trial minutes.

Respondent agreed to accept some responsibility and was prepared to return part of the $2,000.00 to Mrs. Morris (237).

He did not perfect the appeal because he became ill, had domestic problems and was surrendering his practice when he went to Jamaica (240, 241).

Legal Aid took over when Mr. Headley and Mrs. Morris could not agree on a fee (241, 242).

The trial minutes were returned to Mrs. Morris and Respondent was now through with the case (243).

On August 13, 1979 this Court assigned Legal Aid to perfect and prosecute the appeal (Pet. Exh. 9, 55). Respondent admits that he should have perfected the appeal, but when he left for Jamaica, he transferred the entire file and appeal with Mr. Headley (245.

He was then finished with the matter so far as he was concerned (246)

Respondent stated he would return part of the money he had received, but as of the date of this hearing (March 16, 1982) no part had been returned. Respondent believes that he was entitled to some compensation for the work he had done (254). He had an understanding with Mrs. Morris that

of the $2.600.00 paid, ($1,200.00 spent for the minutes) $1,400.00 balance would be divided equally between them (255).

He is now prepared to return $725.00 to Mrs. Morris (257).

When he left for Jamaica, he knew that he would not continue with the appeal, but he did not return any part of the money because he still "entertained the thought that (he) earned the balance" (262).

It should be noted that on August 11, 1982, I received a letter from Mr. Headley advising me that Respondent has "recently repaid Mrs. Morris the sum of $750.00 representing a full return of her retainer".

Mr. Harrow, counsel for Petitioner confirmed to me that $750.00 was repaid.

At the hearing of March 19, 1982, Respondent said he would return the $725.00 within a week. This return was understood was without prejudice to my report (283). Restitution does not bar this proceeding (Rules of this Court 691.8).

I find that Charge Two has been sustained and that Respondent's conduct in the Morris matter constituted neglect of a legal matter entrusted to him in violation of Rule DR6-101A of the Disciplinary Rules of Lawyers Code of Professional Responsibility adopted by the N.Y. State Bar Association and also of DR7-101-A(2), failure to carry out a contract of employment and DR9-102-B(4) promptly to pay to his client Mrs. Morris, money she was entitled to receive.

CHARGE THREE

In July, 1980, Respondent issued a check for $15,000.00 drawn on his escrow account which was returned for insufficient funds and not made good until January, 1981.

The testimony of Courtney Hamilton and John Campbell before the Grievance Ciommittee on March 26,

1981, was received in evidence without objection as Petitioner's Exhibit 21 (155).

Mr. Hamilton testified before the Grievance Committee as follows:

On May 3, 1980, a contract was entered into between Mr. John Campbell as purchaser and Dr. Nebab as seller, for the sale of premises in Laurelton, New York (46, 56).*

The closing of title was set for July 23, 1980 (46). Mr. Hamilton is an attorney at law. He and Respondent shared office space. Respondent is still working partly out of this office (47). Mr. Hamilton was the attorney for Mr. Campbell in this transaction and Robert Schneider was attorney for the seller, Dr. Nebab (47).

At the closing of title, a check for $15,000.00 drawn on Respondent's escrow account was delivered and it subsequently "bounced" (48).

A few months before the closing of title, Campbell had loaned Respondent ten or twelve thousand dollars (48, 49). A week before the closing, Respondent was told that Campbell needed the loan repaid and that Respondent should give his check to him or Campbell (49). The evening before the closing, Respondent delivered his check for $15,000.00 (49).

Campbell's loan to respondent of $15,000.00 was to enable the latter to purchase some property in Florida (49). The loan bore no interest. He, Campbell and Respondent, had been friends for many years. (49).

Respondent delivered his $15,000.00 check at Hamilton's office (50). It was drawn on Respondent's bank account (67). Respondent did not mention that he had insufficient funds to cover the the check and it "bounced" (50). He did not remember Respondent telling why the check bounced; something to do with personal problems Respondent was having (51). This check had been delivered at the closing by Campbell as part of the purchase price. After it was dishonored, the title company spoke to Hamilton about the check not being honored (51). But he could not reach Respondent and told them as soon as he did he would

let them know (51). Eventually Respondent made the check good (51).

He has known Campbell all his life, and the latter knew Respondent through Hamilton's law office (53). About 1975, a business relationship developed between Hamilton's law firm and Respondent. They would refer criminal cases and some civil to him (55). Respondent had nothing to do with the Campbell, Nebab transaction (59).

During 1980, Respondent began to have personal problems, involving his wife, children and parents (60). But he noticed no unusual acts by Respondent, who appeared to be normal (60).

Prior to the title closing on July 23, 1080, he told Campbell that additional money would be needed to complete the Dr. Nebab deal (65). He was sure that Respondent would repay the loan before closing, Respondent knowing that the $15,000.00 were monies ear-marked for the purchase. (65).

He was advised that the check had been returned for insufficient funds by the title company, which handled the closing (67, 68). When he contacted Respondent as to this, Respondent promised to make the check good (68, 69). Respondent repaid the $15,000.00 sometime prior to end of 1980 (71). The contract of sale called for a certified check for the balance of the purchase price due from Campbell to Dr. Nebab (74).

But, Respondent's check for $15,000.00 was accepted in view of the fact that it was an attorney's escrow check (76).

John Campbell testified as follows:

He knew Respondent for five or six years (77).

He is the owner of a gasoline station where Respondent bought gas (77, 78).

He had loaned Respondent $10,000.00 in cash on March 13, 1980. He went to the bank, got cash and gave it to Respondent. The latter signed a paper saying he owed Campbell $10,000.00 (79). He corrected his testimony to the effect that the loan was in fact $15,000.00, not $10,000.00

(82). Respondent wanted the money to buy a business in Florida (79). When he borrowed the money, Campbell told Respondent that he (Campbell) was buying a house and needed the money returned. Respondent said "O.K. I will get it back to you before" (80). Respondent knew that Campbell needed the money to buy the house (81). A couple of weeks before closing he had Mr. Hamilton tell Respondent that the house was going to close and that he (Campbell) needed the money (81).

Respondent gave Mr. Hamilton a check, which the latter turned over to Campbell the day of the closing (81). After the check was returned for insufficient funds, Respondent promised to make it good which he did about January, 1981 (82, 83). Before he loaned the money, he told Respondent that he needed it for a closing on the house to which Respondent replied, that he would get it back before that time. (88).

He reiterated that he told Respondent that he needed the money to buy the house and to return the $15,000.00 prior to the closing which Respondent promised to do (94).

The closing on the house was scheduled for July, 1980. He called Respondent and told one of latter's secretaries that he needed the money for the closing (95, 96).

The check was returned for insufficient funds (98), although at the closing someone called the bank, which said the check was "o.k." (98). The $15,000.00 he loaned Respondent was in the form of a certificate of deposit cashed on March 13, 1980 for $10,500.00 and $4,500.00 he withdrew from his savings account (104). This concluded the testimony of Hamilton and Campbell before the Grievance Committee (Pet. Exh. 21).

As part of Petitioner's case, it offered in evidence a photostat copy of front and back of a check dated July 23, 1980 for $15,000.00 to the order of John Campbell drawn by Respondent on European American Bank endorsed by Campbell to Citibank, which held the mortgage on the McNab property which Campbell was buying. This check is Petitioner's Exhibit 22, received in evidence without objection at Page 156 of the hearing minutes.

Testimony of Respondenht Regarding Charge Three, the $15,000.00 check:

Respondent admitted that he had borrowed $15,000.00 from Campbell and that a condition of the loan was that it be repaid to Campbell prior to the latter's closing of title on the purchase of the McNab house (257).

Hamilton told Respondent that the closing was near and he needed the money to complete the purchase of the property (288, 289). He thereupon wrote the check for $15,000.00 (Pet. Exh. 22) on his escrow account and gave it to Hamilton (289). The check was returned for insufficient funds. Respondent stated "I assume full responsibility for that", meaning that when he wrote the check and gave it to Hamilton, there was no meney in the account to cover the check, which he knew (290). He thinks he told that to Campbell or Hamilton (290). He had indicated to Campbell that he expected the proceeds of another transaction which he intended to dopisit so that the $15,000.00 check would be good. (290).

These proceeds were to emanate from a mortgage transaction but there was a snag when he was supposed to get the money. He eventually received the mortgage money and deposited it in a corporate account of which corporation his wife is an officer. When he went to the bank to transfer the money to his personal account, he found that his wife had withdrawn $25,000.00, leaving only $5,000.00 in the account. This prevented him from withdrawing the $15,000.00 from the corporate account and deposit it in his personal account to make the $15,000.00 check good (189, 291).

Finally, after extensive negotiations his wife agreed to release $15,000.00 to make the check good and then in fact he did make the check good. (292).

What Respondent is saying is that he originally issued his check for $15,000.00 he knew he had insufficient funds in his escrow account to cover it, but he was hoping that as a result of the mortgage transaction to realize enough money

to put in his bank so that when the $15,000.00 check he issued to Hamilton was submitted for payment, it would be honored (292). But the mortgaged property was in a corporate name of which corporation his wife was an officer and she withdrew the money without his knowledge. This is the money he relied upon to make the $15,000.00 check good (292, 293). He knew that the $15,000.00 was to be used by Campbell to pay the purchase price on the house Campbell was buying but he did not know when title was to close. He has no recollection that Campbell approached him a week before the closing asking for his check. Mr. Campbell never approached him at all (294, 295).

He did not know when the Campbell transaction was to close but he was hoping the $15,000.00 check would be made good before then (314). He told Mr. Campbell about this, and the latter knew the whole story (315). Mr. Campbell knew there was some question as to whether the check was good when he delivered it at his closing, but he relied upon Respondent's statement that it would be made good (315). He gave thecheck to Hamilton, Campbell's attorney. He did not tell Mr. Hamilton the circumstances. He did not know a closing was pending. When he gave the check, he knew that it was not good. He did not have a conversation with Hamilton, but then stated that he did not recall the conversation (317).

I do not believe or credit Respondent's testimony. It is incredible. If I accept this testimony, I must conclude that Campbell delivered Respondent's check for $15.000.00 as part of the purchase price to the seller at the closing, knowing that this check was no good, which in the face of the acceptable and credible evidence, I cannot do.

I find the check for $15,000.00 issued by Respondent was a bad check in possible violation of Section 190.05 of the Penal law, that Respondent in this Campbell transaction has engaged in illegal conduct involving dishonesty, fraud, deceit and misrepresentation, and conduct that adversely reflects on his fitness to practice law in violation of Disciplinary Rule 1-102 Subdivisions 4 and 6. The issuance of an attorney's check, returned for insufficient funds has been held to

constitute professional misconduct (Matter of Guttman 54 A.D.2d 70).

CHARGE FOUR

Respondent has failed to cooperate with the Grievance Committee.

This charge was withdrawn by Petitioner in the interests of justice (176) and requires no further comment.

CHARGE FIVE

On or about December 12, 1979, Respondent received $2,000.00 from Hazel Tabois to be held in escrow pursuant to a contract of sale of realty and Respondent failed to hold said funds in escrow and converted them to his own personal use and benefit.

Philip A. Treibman testified in substance as follows:

He is an attorney-at-law and represented one Mrs. Hazel Tobois in the purchase of realty. The contract of sale was signed on December 12, 1979 (90); in Respondents office. He was present. This contract ws in evidence as Petitioner's Exhibit 12 (93).

On the closing, Mrs. Tobois made a deposit of $2,000.00 in the form of a bank check. This was endorsed by her "Pay to the order of Lewis G.P. Ashton as attorney" (94). This check which is in evidence as Petitioner's Exhibit 13 (96) was deposited on December 13, 1979. Pursuant to said contract, the $2,000.00 was to be held in escrow by Respondent until closing of title. Respondent was the seller's attorney (97). The contract provided for a termite inspection and if termites were found, the seller had the option of repairing or cancelling the contract. Treibman sent Respondent a copy of the unfavorable termite inspection, but had no reply by the end of December, 1979, when he wrote Respondent for the return of the $2,000.00 deposit (99). Title did not close Mrs. Tabois desired to cancel the contract. Respondent said he would seek another buyer and if successful would return the deposit (100). On June 9, 1980 Respondent returned $1,000.00 of the deposit. This was made by Respondent's check to the order of Mrs. Tabois

dated June 9, 1980 for $1,000.00 and bore the legend "partial refund of $2,000.00 escrow deposit". This check is in evidence as Petitioner's Exhibit 14 (104). Petitioner's Exhibit 15 (105) are the monthly statements of Respondent's escrow account at the European American Bank from December 3, 1979 to June 1979. This exhibit indicates that on December 13, 1979 when Respondent deposited the check, there was a balance of $4,466.00. On December 26, 1979, the balance was $575.90, indicating a partial withdrawal and conversion of the escrow deposit of $2,000.00. On January 2, 1980,the escrow account was overdrawn in the amount of $4,424.10, again evidencing a conversion of the ewcrow funds.

As I have observed, Mrs. Tabois received a partial return of the deposit on June 9, 1980.

Respondent's testimony as to the Tabois transaction:

He released the $2,000.00 escrow money to the sellers to enable them to pay off a second mortgage with the consent of Mrs. Tabois (300). In order to save the property, Mrs. Tabois had agreed to satisfy the second mortgage of $2,528.82 and she authorized the release of the $2,000.00 deposit for that purpose. The latter had personal problems and decided not to go through with the contract (301, 311).

The sellers then agreed to resell the house and Mrs. Tabois was to get the $2,000.00 back. He returned $1,000.00 to Mrs. Tabois and she eventually received the balance of $1,000.00 (312, 313).

Mrs. Tabois on being recalled testified as follows:

In December, 1979, she contracted to purchase a house from Melvin Jones (360). The contract is Petitioner's Exhibit 12 (93). At the contract closing she was represented by Mr. Treibman, an attorney, the seller Jones by Respondent (361). She made a down payment of $2,000.00 by check (Pet. Exh. 13; 96). Thereafter, she cancelled the deal and asked her attorney to obtain a refund of the $2,000.00 (362). She cancelled the deal because the home was in a deplorable condition which was not corrected within

a specified time (362, 363). This was the only reason for termination of the contract. She had no personal problems which induced the decision (363, 370, 371, 372) contrary to the testimony of Respondent (301, 311).

On January, 1980, she wrote her attorney (Pet. Exh. 3o; 364) of her decision to annul the contract. She eventually received the down payment, does not recall the month or year, but it was a few months after she wrote her attorney Mr. Treibman (364, 365).

During this period, she spoke with respondent who promised to return the money as soon as the sellers gave their "O.K." to do so (365).

She finally received a partial return of $1,000.00 in June, 1980 by a check of Respondent's. (366). The check is Petitioner's Exhibit 14 (104). When she inquired of Respondent why only $1,000.00, he replied that this is what he had at this time to give (372).

She never told Respondent he could give the $2,000.00 to the seller Jones, so that he could satisfy a second mortgage on the home, at least until the final closing of title (368). She does not remember giving Respondent permission to use the $2,000.00 for the payment of the second mortgage before title close (369, 370).

Respondent was not present at the hearing when Mrs. Tabois was recalled, because he was in another county awaiting a jury's verdict (377).

I advised Mr. Headley that if Respondent wished to testify concerning Mrs. Tabois testimony on recall (April 14, 1982), I would afford him a further opportunity so to do (375, 376). Mr. Headley stated that he would have to consult with Respondent as to whether he desired to call other witnesses (376). I stated that Mr. Headley should let me know by April 16, in which event I would fix a new hearing date for that purpose.

To the date of this writing (September, 1982) I have received no word from Mr. Headley, nor as I have been advised has Mr. Harrow, petitioner's counsel and the taking of further testimony is now closed (381).

I do not credit and I reject the testimony of Respondent. I believe the testimony of Mr. Treibman and Mrs. Tabois. I find that Respondent converted the $2,000.00 which was to be held in escrow by him.

Respondent's defense to the Tabois conversion, was that a few days after December 12, 1979, the day the contract was signed at Respondent's office, Respondent met with Mrs. Tabois at his office, and she authorized him to release the $2,000.00 to stay the foreclosure of the second mortgage on the property. Although Tabois was represented by an attorney, he was not present at this alleged meeting.

A review of the record indicates that Respondent's testimony in the Tabois matter was simply not true. Respondent relies heavily on the fact that Mrs. Tabois testified that she "...didn't remember" giving Respondent permission to use the $2,000.00. However, Mrs. Tabois earlier testified that, "I never gave Mr. Ashton permission to use that money to pay the seller" (368).

In the exchange of correspondence between Respondent and Philip A. Treibman, Esq., there is no mention of the use of the $2,000.00 deposit to pay off the second mortgage. Respondent did not produce anything in writing to substantiate his testimony. He did not tell Treibman, Tabois' attorney, about the alleged transaction.

Respondent testified that he met with Tabois, in his office, a few days after the contract was signed. The contract was signed in Respondent's office on December 12, 1979. Tabois testified that when she picked up a $1,000.00 check at Respondent's office in June of 1980, that this was the first time she had been back to Respondent's office since the contract ws signed (367).

If the alleged transaction occured as the Respondent testified, then the $2,000.00 would have been released from his escrow account sometime in December, 1979. A review of Respondent's escrow account during this period reveals that there was not any $2,000.00 payment leaving in account. It is also interesting to note that on the $1,000.00 check Tabois received in June, 1980, Respondent wrote in the margin, "partial refund of $2,000.00 escrow deposit" (Pet. Exh. 14).

thus indicating that the funds were indeed to be held in escrow.

"In Matter of Salenger (Appellate Division, First Department), decided in July, 1982, reported at pages 1 and 14 of the New York Law Journal of July 26, 1982, the court said inter alia:

> "In Matter of marks (72 A.D. 2d 399) we made crystal clear that any attorney who converts funds entrusted to his custody, is presumptively, unfit, to be a member of the Bar."

CHARGE SIX

Respondent has been guilty of failing to maintain a proper Special Account as required by Section 691.12 (a) of the Rules of this Department governing the conduct of attorneys.

Paul Platex testified in substance as follows:

He is assistant manager of European American Bank and is familiar with bank statements (128).

Petitioner's Exhibit 20 (136) is the monthly statement of Respondent's escrow account at European American Bank for the period June, 1979 to November, 1979. The initials "OD" following the balances on said statement means overdrawn (129, 130).

It appears therefrom that on June 4, 1979, the account was overdrawn by $908.34 meaning by the term "overdrawn" that by that date Respondent had issued checks on the escrow account in excess of his credit balance to the extent of $908.34 (134). On June 22, 1979, the account was similarly overdrawn by $4,428.34 (130).

On July 9, it was overdrawn by $328.34; on July 11, overdrawn by $342.16 (131).

The escrow account was overdrawn six times during the period June, 1979 to September, 1979 (135).

Respondent was served with two judicial subpoenas which required the production of monthly statements, cancelled checks, deposit slips and ledger books on similar records for period of May 31, 1979 to December 31, 1980 (Pet. Exh. 16

and 17), which Respondent admits receiving (109, 110). Respondent supplied monthly statements for July 1, 1980 to December 31, 1980 but nothing further.

Petitioner's Exhibit 18 (111) is a letter from Petitioner to Respondent's attorney, requesting an explanation of certain deposits in the escrow account (112). There is no evidence that Respondent complied with that request and I conclude that he did not.

Petitioner's Exhibit 19 (113) is a letter from the Grievance Committee to Respondent's attorney, dated December 31, 1981 in which Respondent is asked to explain seven individual transactions in the escrow account. There is no evidence that Respondent complied with that demand and I conclude that he did not.

Respondent's testimony with respect to Charge Six:

Paragraph 1 of Charge Six avers that Respondent failed to produce his escrow records as required by the judicial subpoenas.

Respondent testified that he has produced to the best of his ability that which he has been able to do, meaning the bank statements (341). He did have and did keep some records which he has been unable to produce and still unable to do so because of "domestic problems that (he) is experiencing" (342). Those records were kept in his home in Brooklyn where his ex-wife refused him entry, and indicated that she had destroyed his personal belongings (342). He has produced every record that he could get his hands on (324).

Paragraph 2 of Charge Six avers that between June 4, 1979 and December 3, 1981, Respondent's escrow account was overdrawn on 48 occasions. Respondent denied it was overdrawn 48 times, and states that even by the testimony of the bank official,it was overdrawn about 20 or 23 times over a two or three year period (343). At no time did this overdraft involve Client's funds. Such funds would be in the escrow account, but no client can claim he did not get his money when due (343). (To the contrary, see Charge One and Charge Five, where the escrow monies were returned long after they were due). He cannot recall each overdraft,

but there are some, he recalls vividly. There was never a time when he received money belonging to a client and deposited in his escrow account, after which the balance in the account fell below the money deposited (344).

Even though the bank statements reflected overdrawn, the bank manager would honor the checks (345, 346, 347). This did not happen in every instance of overdrawing, but it did occur frequently.

When asked if he had any records to substantiate his testimony in this respect, he replied that he did maintain records but "(he) will confess that (he) did not dot all the I's and all the T's". He did maintain a ledger book with the rest of his belongings but he has no access thereto because of his wife (347). He would attempt to explain each overdraft but could not do so at this hearing March 19, 1980 (350). The hearing was adjourned to April 14, 1982. He did not use the escrow account to deposit his own funds (351). It was money of the client only that went into the escrow account.

On occasion, such money would include his fee. In which event he would draw two checks on the account,one to the client and the other to him as his fee (352).

Respondent did not attend the adjourned hearing of April 14, and offered no further testimony regarding the overdrawn bank items. Respondent was offered an opportunity to present further evidence on any of the charges, at another hearing, but did not avail himself therof, and the hearings were concluded with the April 14 session (380, 381).

I find that the charge in paragraph 1 of Charge Six has been sustained.

Section 691.12 (b) of the Rules of this court requires an attorney to maintain a ledger book or similar records showing the source of all funds deposited in the escrow account and identifying the particular client. This must mean dotting all the "I's" and crossing all the "T's".

Subdivision "e" of said Section states that failure to maintain or keep the required records or to produce them subjects an attorney to disciplinary proceedings.

Respondent's excuse for failure to produce the required records, that his wife had denied him access to his home where he says they were kept and had destroyed those records, is not acceptable. Respondent had a positive and direct duty to keep those records some place where they were subject to his control.

This is not a situation where the records were destroyed due to an act of God. Respondent's troubles with his wife did not occur overnight. He had ample opportunity to remove his records and store them in some place to which only he but not his wife had access.

I find that the charge in paragraph 2 of Charge Six has been sustained. By Respondent's own admission, as I have observed, the escrow account was overdrawn on many occasions.

See Matter of Crean, Appellate Division 1st Dept. New York Law Journal April 30, 1982.

This concludes my report, but I should remark upon testimony of Respondent which pervades the record that the cause of his difficulties were domestic problems, affecting the relations between him and his wife.

In his brief submitted to me, Respondent states in his conclusion, that the,

> "occurrences (the charges) took place during a period of unusual mental strain in Mr. Ashton's life as a result of his marital difficulties. The marital difficulties ultimately led to Mr. Ashton being divorced."

It has been uniformly held that this explanation or excuse for professional misconduct cannot be accepted, if the principle is to be upheld that there is a "duty to protect the public and to vindicate the public's trust in lawyers as custodians of client's funds."

Matter of Marks 72 A.D. 2, 399, 401.

The Marks Court affirmed that even severe, life threatening and preoccupying illnesses is insufficent to avoid disciplinary action against an attorney.

CONCLUSION

I find that Petitioner has established Charge One, Two, Three, Five and Six, by the required standards of proof (Feola v. N.Y. State Bar Association supra); that Respondent on these occasions has committed professional misconduct as defined in Section 691.2 of the Rules of this Court.

Dated: Brooklyn, New York
September 8, 1982.

Respectfully submitted,

/S/ AARON E. KOOTA
Special Referee

APPENDIX O

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	INDICTMENT S 85 Cr. 448 (JES)
LEWIS ASHTON and NEVILLE NICHOLAS,	:	
Defendants.	:	

COUNT ONE

The Grand Jury charges:

Introduction

1. At all times pertinent to this Indictment, the Veterans Administration operated a real estate program to sell modest-priced housing to members of the public. To obtain a house owned by the VA, a member of the public had to submit a winning bid for the property. The VA was supposed to evaluate the bids based on factors such as the price and credit terms offered, the applicant's credit and employment history, and whether the applicant was a veteran.

2. At all times pertinent to this Indictment, a member of the public could not submit a bid directly to the VA, but rather was required to submit it through a sales broker registered with the VA (hereinafter called "VA sales broker"). Information concerning available properties could not be obtained directly from the VA, but rather had to be obtained from a VA sales broker.

3. At all times pertinent to this Indictment, VA sales brokers were required to be attorneys licensed to practice

law in the state, or licensed real estate brokers.

4. To prevent VA sales brokers from obtaining unfair advantage based upon their inside access to listings of available properties and their inside knowledge of other parties' bids, VA regulations have forbidden VA sales brokers from bidding on VA properties for themselves, except under stringently limited and approved circumstances.

5. At all times pertinent up to April, 1983, the defendant LEWIS ASHTON was an attorney licensed to practice law in New York, and was registered with the VA as a broker in the real estate sales program.

6. At all times pertinent to this Indictment, Diane McGhee, who is not charged as a defendant herein but who is separately charged in Criminal Information 85 Cr. 1080 in the Southern District of New York, was a secretary and assistant to the defendant LEWIS ASHTON.

7. At all times pertinent to this Indictment, the defendant NEVILLE NICHOLAS was a friend and associate of the defendant LEWIS ASHTON.

8. At all times pertinent to this Indictment, the name "William Young" was a false name used by the defendants LEWIS ASHTON and NEVILLE NICHOLAS to obtain properties in the VA sales program.

THE CONSPIRACY TO DEFRAUD AND TO FILE FALSE STATEMENTS

9. From in or about November 1982, up to and including May 21, 1985, in the Southern District of New York and elsewhere, LEWIS ASHTON and NEVILLE NICHOLAS, the defendants, together with Diane McGhee, who is not named as a defendant herein, and with other persons to the Grand Jury unknown, unlawfully, wilfully, and knowingly did conspire, combine, confederate and agree together and with each other to defraud the United States and to commit offenses against the United States, to wit, to violate Title 18, United States Code, Section 1001.

10. It was a part of this conspiracy that the

defendants LEWIS ASHTON and NEVILLE NICHOLAS, together with Diane McGhee, unlawfully, wilfully, and knowingly would and did make false, fictitious, and fraudulent statements and representations in matters within the jurisdiction of the United States Veterans Administration, namely, the defendants LEWIS ASHTON and NEVILLE NICHOLAS, together with Diane McGhee, would and did carry out a fraud by falsely using the name "William Young" to acquire and attempt to acquire one or more VA properties.

11. It was a part of this conspiracy that the defendants LEWIS ASHTON and NEVILLE NICHOLAS, together with Diane McGhee, would and did falsely tell the Veterans Administration that a VA property at 27 Brook Avenue, Wyandanch, New York, was being bid for and purchased by one "William Young," when in truth in fact it was purchased by the defendant LEWIS ASHTON for his own use and profit using the false name "William Young", thereby allowing the defendant LEWIS ASHTON improperly to avoid federal rules limiting the purchase of VA property by VA-registered sales brokers, improperly to gain a sales commission, and improperly to avoid disqualifying credit reference checks.

12. It was a part of this conspiracy that the defendants LEWIS ASHTON and NEVILLE NICHOLAS, together with Diane McGhee, would and did defraud the United States of its governmental function and its right to preserve open access bidding for members of the general public for VA properties, by fraudulently evading the VA rule limiting bids by VA sales brokers.

OVERT ACTS

13. In furtherance of the conspiracy and to the effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

(a) On or about November 10, 1982, defendant LEWIS ASHTON caused "Credit Statement of Prospective Purchaser and Contract of Sale," bidding $13,150 for a VA

property at 27 Brook Avenue, Wyandanch, New York, in the fictitious name of "William Young".

(b) On or about November 12, 1982, defendant LEWIS ASHTON directed the submission of the "Credit Statement of Prospective Purchaser and Contract of Sale" to the New York office of the Veterans Administration, at 252 Seventh Avenue, Manhattan.

(c) On or about November 24, 1982, defendant LEWIS ASHTON fraudulently notarized a VA form concerning $3,743 in required building repairs, which purportedly was signed by "William Young", and caused its submission to the Veterans Administration. 252 Seventh Avenue, Manhattan.

(d) On or about November 24, 1982, defendant LEWIS ASHTON directed the submission to the Veterans Administration, 252 Seventh Avenue, Manhattan, of a copy of a purported federal tax return in the name of "William Young", which in fact was bogus and had never been filed with the Internal Revenue Service.

(e) On or about March 7, 1983, defendant NEVILLE NICHOLAS attended a closing for the purchase of the Veterans Administration property at 27 Brook Avenue, Wyandanch, New York, posing as "William Young".

(f) On or about March 7, 1983, defendant NEVILLE NICHOLAS signed closing documents for the purchase of the property of 27 Brook Avenue, Wyandanch, New York, using the fictitious name and identity "William Young".

(g) On or about August 31, 1983, defendent NEVILLE NICHOLAS attended a meeting with an official of the Inspector General's Office of the Veterans Administration, at 252 Seventh Avenue, Manhattan, concerning the property aat 27 Brook Avenue, Wyandanch, New York, at which he posed as "William Young".

(h) On or about August 31, 1983, defendant NEVILLE NICHOLAS represented to a member of the VA Inspector General's Office at 252 Seventh Avenue, Manhattan, that he was "William Young", although he stated that he had no current address or telephone number and carried no personal identification.

(i) On or about September 7, 1983, defendant LEWIS ASHTON sent a letter to the Veterans Administration, 252 Seventh Avenue, Manhattan, claiming that "William Young will convey his interest to me on September 30, 1983".

(j) In or about march 1984; defendant LEWIS ASHTON attempted to sell the property at 27 Brook Avenue, Wyandanch, New York, to Elie Johnson for $43,000.

(Title 18, United States Code, Section 371).

COUNTS TWO THROUGH NINE

The Grand Jury further charges:

14. Paragraphs Five and seven of this Indictment are repeated and realleged as though fully set forth herein.

15. On or about the dates set forth below, in the Southern District of New York, LEWIS ASHTON and NEVILLE NICHOLAS, the defendants, set forth below, unlawfully, wilfully and knowingly did make false, fictitious and fradulent statements and representations in a matter within the jurisdiction of the United States Veterans Administration, as set forth below:

COUNT	APPROXIMATE DATE	DESCRIPTION OF FALSE STATEMENT	DEFENDANT
TWO	11/10/1982	Credit Statement of Prospective Purchaser and Contract of Sale	LEWIS ASHTON
THREE	11/23/1982	Jeffery Slater letter concerning $8,000 payment	LEWIS ASHTON
FOUR	11/24/1092	Certification of repair money	LEWIS ASHTON
FIVE	11/24/1982	Fradulent tax return	LEWIS ASHTON
SIX	3/7/1983	Installment Contract for VA Sale of Real Estate	LEWIS ASHTON NEVILLE NICHOLAS
SEVEN	3/7/1983	Sales Closing Statement	LEWIS ASHTON NEVILLE NICHOLAS

COUNT	APPROXIMATE DATE	DESCRIPTION OF FALSE STATEMENT	DEFENDANT
EIGHT	8/31/1983	False claim of identity at meeting with Inspector General	LEWIS ASHTON NEVILLE NICHOLAS
NINE	9/7/1983	Letter concerning conveyance of PROPERTY	LEWIS ASHTON NEVILLE NICHOLAS

(Title 18, United States Code, Sections 1001 and 2)

COUNTS TEN AND ELEVEN

The Grand Jury further charges:

16. Paragraphs Six and Seven of this Idictment are repeated and realleged as though fully set forth herein.

17. From in or about April 1983, up to and including August 1983, in the Southern District of New York and elsewhere, LEWIS ASHTON, the defendant, together with Diane McGhee who is not named as a defendant in this Indictment, unlawfully, wilfully, and knowingly did devise and intend to devise a scheme and artifice to defraud and for obtaining money and property by means of false and fradulent pretenses, representations and promises, namely, the defendant LEWIS ASHTON and Diane McGhee devised a scheme to obtain and use a fradulent American Express card in the name of "William Young".

18. It was a part of this scheme and artifice to defraud that the defendant LEWIS ASHTON would and did cause the completion of an American Express card application in the name of "William Young", falsely claiming that "William Young" ws employed as an "Office manager" at the "law office" of "Lewis Ashton & Associates" and falsely claiming that "William Young" resided at 27 Brook Avenue, Wyandanch, New York.

19. It was further a part of this scheme and artifice to defraud that the defendant LEWIS ASHTON would and did use the American Express card in the name of "William Young" to charge restaurant, hotel and travel expenses.

20. For the purpose of executing this scheme and artifice to defraud and attempting to do so, in the Southern District of New York and elsewhere, LEWIS ASHTON, the defendant, unlawfully, wilfully, and knowingly did place and cause to be placed in a post office and authorized depository for mail matter, letters to be sent and delivered by the Postal Service, and did cause such letters to be delivered by mail according to the directions thereon, as set forth below.

COUNT	APPROXIMATE DATE OF MAILING	DESCRIPTION OF MAILING
TEN	May 1, 1983	American Express Card application in the name of "William Young"
Eleven	May 3, 1983	American Express Card No. 3710-745493-51001, in the name of "William Young"

Title 18, United States Code, Sections 1341 and 2)

/S/ RUDOLPH W. GUILIANI
United States Attorney

APPENDIX P

November 23, 1982

To whom it may Concern:

This is to certify that I Jeffrey Slater, am giving the sum of ($8,000.00) Eight Yhousand dollars to my Brother-in-Law Mr. William Young.

Yours truly
/S/ JEFFREY SLATER

Sworn to before me this
23 day of November 1982

/S/ LEWIS G.P. ASHTON
Notary Public

APPENDIX Q

VETERANS ADMINISTRATION
252 SEVENTH AVENUE
NEW YORK, NEW YORK 10001

THIS IS TO CERTIFY THAT I William Young HAVE THE SUFFICIENT FUNDS OF $3,743.00 TO DO ALL REQUIRED REPAIRS ON V.A. PREMISES LOCATED AT 27 Brook Avenue, Wyandanch, N.Y. AND BEARING P.M. # 544070.

/S/ William Young
Purchaser

SWORN TO BEFORE ME THIS
24th DAY OF November 1982
/S/ LEWIS G.P. ASHTON

APPENDIX R

September 7, 1983

Veterans Administration
252 Seventh Avenue
New York, N.Y. 10001

Re: Account #06-4-0011990
27 Brook Avenue
Wyandanch, New York

Dear Sir,

Please find enclosed a check in the amount of ($1,946.80) one thousand nine hundred and forty-six dollars and eighty cents, representing the arrears on the above numbered account.

This payment is made at the request of and on behalf of Mr. William Young.

Please be further advised that pursuant to contract dated July 29th, 1983, William Young will convey his interest to me on September 30th, 1983.

In this regard kindly furnish the undersigned with the figures and documents necessary to effectuate the transfer of the above account as of September 30, 1983.

Your kind cooperation is appreciated.

Very Truly Yours,
/S/ Lewis G.P. Ashton

CERTIFICATE OF MAILING

I hereby certify that on the _____ 1998, I caused a true and correct copy of the above and foregoing instrument to be deposited in the U.S. Mail, First Class Postage fully prepaid thereor to:

Robert H. Straus
Attorney for Grievance Committee
210 Joralemon Street
Brooklyn, NY 11201
(718) 624-7851

Dated:----------, 1998 _____